रजिस्टर्ड नं0 HP/13/SML-2007.

राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 14 फरवरी, 2008 / 25 माघ, 1929

हिमाचल प्रदेश सरकार

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचनाएं

शिमला–171002, 6 अगस्त, 2007

संख्या सिंचाई 11–28 / 2007–ऊना.– यतः राज्यपाल, हिमाचल प्रदेश को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार द्वारा सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव कोहाडछन्न, तहसील अम्ब, जिला ऊना में उठाऊ सिंचाई योजना कोहाडछन्न के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इससे सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि अर्जन अधिनियम, 1854 की धारा 17–4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमतः सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. अत्याधिक आवश्यकता को दृष्टि में रखते हुए राज्यपाल उक्त अधिनियम की धारा–17 की उपधारा (4) के अधीन यह भी निर्देश देते हैं कि उक्त अधिनियम की धारा–5 ए के उपबन्ध इस मामले में लागू नहीं होंगे।

विस्तृत विवरणी

जिला : ऊना **तहसील : अम्ब**

गांव	खसरा नं०	क्षेत्र हैक्टेयर में
कोहाडछन्न	2421 / 1	0–02–37
	2422 / 1	0–02–55
	2423 / 1	0–04–56
	2424 / 1	0–01–21
	कित्ता : 4	0–10–69

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शिमला–171002, 26 जुलाई, 2007

संख्या सिंचाई 11–129 / 2007–ऊना.– यतः राज्यपाल, हिमाचल प्रदेश को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार द्वारा सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः गांव अम्ब खास, तहसील अम्ब, जिला ऊना में नलकूप शामनगर व बढ़ौतरी पेयजल योजना अम्ब के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त परियोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इससे सम्बन्धित हैं, या हो सकते हैं, को जानकारी के लिए भूमि अर्जन अधिनियम, 1854 की धारा–4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमतः सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के तीस दिनों की अवधि के भीतर लिखित रूप में भू–अर्जन समाहर्ता, कागड़ा, हिमाचल प्रदेश लोक निर्माण विभाग के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी

जिला : ऊना		तहसील : अम्ब
गांव	खसरा नं०	क्षेत्र हैक्टेयर में
अम्ब खास	2359 / 1	0–01–76
	2361 / 1	0–01–48
	2366	0–02–93
	2367 / 1	0–00–85
	2367 / 2	0–06–55
	2368 / 1	0–00–12
	2401 / 1	0–07–15
	2402	0–00–95
	किस्सा : 8	0–21–79

आदेश द्वारा,
हस्ता / –
प्रधान सचिव।

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TRANSPORT DEPARTMENT

NOTIFICATION

Shimla-2, the 11th February, 2008

No. Tpt-E(3)8/2006-I.— Whereas, it appears to the Governor, Himachal Pradesh that land is likely to be acquired by the Himachal Pradesh Government for and on the expenses of Transport Department for public purpose, namely for setting up of Weigh Bridge at Toki Barrier, Tehsil Indora, District Kangra, it is hereby notified that land in the locality described below is likely to be acquired for the above mentioned public purpose.

2. This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

3. In exercise of the powers conferred by the aforesaid section, the Governor, Himachal Pradesh is pleased to authorize the officers for the time being engaged in or by the abovesaid Department with their servants and workmen to enter upon and survey any land in the locality and to do all other acts required or permitted by that section.

4. Further, in exercise of the powers conferred under section 17(4) of the said Act, the Governor of Himachal Pradesh is pleased to direct that the provision of section 5 A will not apply in regard to this acquisition.

5. The drawings etc. relating to land in question may be examined in the office of SDM (C)-cum-Land Acquisition Officer, Nurpur, District Kangra.

SPECIFICATION OF LAND

Name of Distt.	Name of Tehsil	Mohal	Mauza	Khasra Nos.	Area in Hectares
Kangra	Indora	Toki	Toki	35/2	0-14-45

By order,
Sd/-
Principal Secretary.

परिवहन विभाग

अधिसूचना

शिमला–2, 11 फरवरी, 2008

संख्याः–टी.पी.टी.–ई.(3)8 / 2006–1.– यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश परिवहन विभाग, द्वारा अपने व्यय पर सार्वजनिक प्रयोजन के लिए नामतः महाल टोकी, मौजा टोकी, तहसील इन्दौरा जिला कांगडा हिमाचल प्रदेश मे धर्मकांटा (वे ब्रिज) की स्थापना हेतु भूमि अर्जित करनी अपेक्षित है, अतएवः एतद्द्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इससे सम्बन्धित है या हो सकते हैं, की जानकारी के लिए भू–अर्जन अधिनियम, 1894 की धारा 4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस उपक्रम में कार्यरत्त सभी अधिकारियों व उनके कर्मचारियों और श्रमिकों को इलाके किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने और उक्त धारा द्वारा अपेक्षित तथा अनुमानतः सभी अन्य कार्यो को करने के लिए सहर्ष प्राधिकार देते हैं। अत्याधिक आवश्यकता को ध्यान में रखते हुए राज्यपाल, हिमाचल प्रदेश उक्त अधिनियम की धारा–17 की उप–धारा–4 के अधीन यह भी निर्देश देते हैं कि उक्त अधिनियम की धारा 5 ए के उपबन्ध इस मामले में लागू नही होंगे। भूमि से सम्बन्धित रेखांक का निरीक्षण कार्यालय उपमण्डलाधिकरी एवं भू–अर्जन समाहर्ता नूरपुर, जिला कांगडा, हिमाचल प्रदेश में किया जा सकता है।

विवरणी

जिला	तहसील	मौजा	खसरा नं0	रकबा (हैक्टेयर)
कांगडा	इन्दौरा	टोकी	35 / 2	0–14–45

आदेश द्वारा,
हस्ता / –
प्रधान सचिव।

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Courtcum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 15/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Daulat Ram S/o Shri Gauri Ram, Village Toppari, P.O. Tikroo, Tehsil, Salooni, District Chamaba, H.P. ..*Petitioner*

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner**.**
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced.

Sd/-
SURESHWAR THAKUR,
Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Courtcum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 11/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Chamaru Ram S/o Shri Singhu Ram, Village Jaloh, P.O. Drakeri, Tehsil, Salooni, District Chamab, H.P. ..*Petitioner*

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent.

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced. Sd/-
(SURESHWAR THAKUR,)
Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Courtcum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 27/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Govind Ram S/o Shri Singhu Ram, Village Jaloh, P.O. Drekari, Tehsil, Salooni, District Chamab, H.P. ..*Petitioner*

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner.
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement

duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced. Sd/-
(SURESHWAR THAKUR,)
Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Courtcum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 26/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Hans Raj S/o Shri Lochu Ram, Village & P.O. Kihar, Tehsil, Salooni, District Chamab, H.P. ..*Petitioner*

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced. Sd/-
(SURESHWAR THAKUR,)
Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

Before Shri Sureshwar Thakur, Presiding Judge, H.P. Industrial Tribunal–Cumlabour Court, Dharamshala, Distt. Kangra H.P.

Reference: No. 26/06

Presented on: 3.1.2006

Decided on 28.6.2007

Sh. Harjit Singh S/o Sh. Karam Singh C/o Shri R.K. Singh Parmar, General Secretary, PB. INTUC,211-L, Brari, P.O. Partap Nagar, Nangal Dam, Distt. Ropar (Pb). ..*Petitioner*.

Versus

Executive Engineer, Irrigation & Public Health Division No.1, Una, Distt. Una, H.P.
..*Respondent*

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Sh. R.K. Singh Parmar, AR

For the respondent Sh. H.S. Dhiman, Ld. Dy. D.A.

AWARD

The hereinafter extracted reference has been received for adjudication for the rendition of an award by this Tribunal:

> "Whether the termination of services of Shri Harjit Singh S/o Shri Karam Singh workman by the Executive Engineer, I&PH Division, Una, District Una, H.P. w.e.f. 22.12.1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?" In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

"1. I have the honour to submit that I was engaged with the respondent in the Mehatpur Sub-Division w.e.f. 1.1.1996 to 22.12.1996 and had put in 251 days of continuous service as defined under Section 25-B of the I.D. Act, 1947, when without any notice, compensation, charge-sheet or Enquiry, I was terminated from service.

2. However, I was re-engaged in 1977 for 64 days only in the year 1998 for 214 days and in 1999 for 72 days and in January, 2000 for 29 days.

3. That I approached the H.P. State Administrative Tribunal, Shimla vide Plaint No. O.A. No.3216/2000 for regularization of my services and the said Honourable Tribunal had ordered to approach the appropriate forum and hence Demand Notice and this reference.

4. That instead to regularize my services, my service were terminated in hire and fire.

5. That as admitted by the respondent before the honourable Tribunal, I had put in more than 240 days of continuous service and therefore I was entitled to protection under Section 25-F(a), 25-F(b) of the I.D. Act, 1947 and also 25-G of the I.D. Act, 1947.

6. That on 22.12.1996, no seniority was maintained before effecting my termination and the management had succeeded in retaining juniors to me those are S/ Sh. Hari Parkash S/o Kishori Lal, Ramesh Chand s/o Jiwan Dass, Jatinder Dutta S/o Sukhdev Dutta, Kabul Singh S/o Mela Singh, Tilak Raj s/o Mela Ram, Yash Pal S/o Kishan Singh, who were employed in the same sub-Division under the same Division (i.e.) Respondent. That all the above are juniors to me and were retained in service after 12/96. Rather new hands S/Sh. Kabul Singh etc. was employed in 2/97 and worked upto 10/97 and Jatinder Dutta from 1/97 to 19/97.

7. That all the above were retrenched in 10/97 on raising the dispute. They all were re-instated in service vide the Award dated 27.10.2000 in Reference No.194/98 titled as Hari Parkash and others and they all were taken back in service by the Respondent and are continuing in service.

8. That from the above, it would show that my termination from service is an unfair Labour practice.

9. That from the above, it would show that the management had adopted pick and choose methods in engagement and dis-engagement of the workman like me.

10. That the action of the management is arbitrary, unjust and un-constitutional and is also in utter disregard to the spirit of the Industrial Disputes Act, 1947.

11. That from the record it would show that I was at the mercy of the management al-through.

12. That my career had been ruined at the hands of the management/respondent, as they had indulged in nefarious designs by not placing me in seniority.

13. That instead to regularize my services, I had been forcibly put on road for no fault of mine.

14. That I had tried my best to secure employment but is facing un-employment till date.

15. That my termination from service w.e.f. 22.12.1996, an is illegal, void and bad-in-law, I am therefore entitled to re-instatement with full back wages except for 379 days during the period 23.12.1996 to 31.1.2000, for which I was allowed to work.

In view of all the above, my termination is illegal, void and bad-in-law and am entitled to reinstatement with full back wages, the same be ordered in the interest of justice".

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

ON MERITS

1. That the contents of this Para are admitted to the extent that the applicant was initially engaged on daily waged basis during 1/1996 but he was not regular in attending to his duties and he worked intermittently according to his sweet will as is evident from the working days endorsed as per Annexure R-I.

2. That the contents of this Para are admitted to the extent that the applicant was engaged on original work and worked intermittently according to his own Will under IPH sub division Mehatpur. During the year 1997 for 64 days , during the year 1998 for 214 days, during the year 1999 for 72 days and during the year 2000 for 29 days and left the job at his own. The working days qua the applicant are appended herewith as per Annexure R-1.

3. The contents of this Para are admitted to the extent that the applicant has approached before the H.P. Administrative Tribunal by filing Original Application No. 3216/2000. Accordingly the aforesaid case of applicant was disposed off by the Hon'ble Court vide order dated 18.3.2002 with the direction to approach the appropriate forum.

4. That the contents of para No.4 are wrong hence denied. The services of the applicant were not terminated by the respondent but he himself had abandoned the job and did not report for duty even when he was asked to so vide Assistant Engineer, IPH Sub-Division Mehatpur Letter No.1154-55 dated 8.11.2001. The copy of letter is endorsed as per Annexure R-II.

5. That the contents of para No.5 of the petition are wrong hence denied. The applicant had not completed 240 days in the proceeding twelve months from the date of his alleged retrenchment as such Section 25-F was not attracted. The petitioner had abandoned the job himself so there is not violation of Section 25-G of the Act.

6. That the contents of para No.6 of the petition are wrong hence denied. The services of the applicant were not terminated by the department as stated above. However, it is submitted that the person named in his para were initially engaged later to the petitioner, but they were regular in their attendance in the year 1997 and they had completed more than 240 days in the year 1997. It is pertinent to mention here that they were dis-engaged w.e.f. 15.10.19997 but their dis-engagement was found to be in violation of Section 25-F of the Industrial Disputes Act as such they were ordered to be re-engaged as per the decision of Labour Court dated 26.7.2000. Copy of decision/Award is attached herewith as per Annexure R-III. It may be stated that the services of the applicant were not terminated on 15.10.1997 when the other person name in the para were dis-engaged . The applicant has worked for 64 days in 1997, for 214 days in 1998, for 72 days in 1999 and for 29 days in the year 2000. The applicant had not completed 240 days from 1997 onward as such his name did not figure in the seniority list. The seniority list is mentioned only in respect of the persons who complete 240 days in each calendar year continuously, resultantly the applicant lost his seniority in the year 1997 and he continued to work intermittently upto year 2000, so the engagement of Sh. Kabul Singh and Sh. Jatinder Dutta does not violate any provision of law.

7. That the contents of para No.7 of the petition are admitted to the extent that the said person were retrenched in 10/19997 and reinstated vide Award dated 26.10.2000 in Reference No.194/1998 titled as "Hari Parkash and others Versus The Executive Engineer, IPH Division No.I, Una. "But it may be clarified here that all had completed 240 days in the year 19997 whereas the petitioner worked for 64 days in the said year as such they all became senior to him.

8. That the contents of para No.8 are wrong hence denied. The respondent has not terminated the service of the petitioner and the Department had not indulged in unfair labour practice.

9. That the contents of para No.9 are wrong and hence denied. The workmen are engaged and disengaged as per the rule and in accordance with law.

10. That the contents of para No.10 are wrong hence denied. The petitioner has himself abandoned the job and the action of the department is not unfair and un-justice in any manner.

11, 12 & 13. That the contents of para No.11,12, and 13 are incorrect in view of the Facts as stated above.

14. That the contents of para No.14 of the petitioner are incorrect, infact he is in Gainfully employed.

15. That the contents of para No.15 of the petition are in total variation of the reference made by the State Government and are wrong and incorrect. The petitioner had himself abandoned the job and he is not entitled to be reinstated.

It is therefore, respectfully prayed that the petition may kindly be dismissed being false and fabricated".

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:-

("1) That the written statement given in this para is wrong, baseless, the breaks were at the sweet will of the management and not on the part of the workman and the claim statement is re-iterated. The subordinates are always at the mercy of their masters.

(2) That the petitioner was allowed to work only for the days indicated in R1 but the petitioner had already completed more than 240 days of service within 12 calendar months. The workman had served the Demand Notice against his illegal termination on 20.12.1996.

(3) That the para stands admitted and therefore needs no reply.

(4) That the averments made are incorrect and is a concealment of material fact and it was the management's mischiefs and he was not allowed service and alleged R-II was never served upon the workman and the management is making a lame excuse.

(5&6) The averments made are wrong, as self admission of the respondent is sufficient through document R1 wherein it is admitted that the petitioner has completed 251 days of service, the management has failed to serve one month's notice and to pay the retrenchment compensation and nonmaintaining of seniority of category and juniors were retained in service. All the persons re-instated by the Honourable Industrial Tribunal, Shimla are juniors to the petitioner Harjit Singh.

(7) That the applicant was senior as he had already completed 240 days in year 1996 and thus all of them were juniors and even then he was not allowed to work and juniors

were allowed to work. Fresh-hands were recruited ignoring the right of re-employment which is a mandatory under Section 25-H of the I.D. Act, 1947.

(8) That the averments made are irrelevant, the claim statement is correct and is re-iterated.

(9) That the averments are wrong, baseless, claim statement in this para is correct.

(10) That the assertion that the workman has abandoned the job is incorrect, as abandonment is a retrenchment as held by the court of law, when there is no charge-sheet, Enquiry or show cause notice.

(11,12,13) That the written statement is wrong, baseless and claim statement in these paras is correct.

(14) The averments made are wrong, baseless and are totally incorrect, claim statement is re-instated.

(15) The written statement is correct, there is no abandonment, the workman Sh. Harjit Singh was after the management for resumption of his duties, but it is the management, who had preferred to engage and to continue the juniors and freshers than to provide the legitimate right to the applicant.

That in view of all the above, it is respectfully prayed that the Award re-instating the petitioner in service with full back-wages may kindly be passed".

On the pleadings of the parties the following issues were framed by this Tribunal.

1. Whether the termination of the services of the applicant is lawful or not? ..*OPC*

2. Whether the applicant abandoned his job under the respondent? OPR

3. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1 No findings in view of findings on issue No.2.

Issue No.2 Yes, in view of the fact that inference of abandonment flows from the prior inference of the claim being stale.

Issue No.3 Claim Petition dismissed.

REASONS FOR FINDINGS

Issue No. 2

It has been contended by the ld. counsel for the respondent that in the light of the interpretation afforded by the Hon'ble High court of H.P., to, the provisions of sub – section 1 of section 10 of the Industrial Disputes Act, whose provisions are extracted hereinafter and when the reference in this case is made with respect to the termination of the services of the claimant which took place in the year 1996, the reference comprises a plainly stale claim and even when there is an implied or tacit issue as struck with respect to the non- maintainability of the reference on ground of delay and latches as stemming from abandonment of job, then, even since the above fact/issues touches upon the jurisdiction of this Tribunal, it, ought to be determined prior to the rendition of findings on other issues as a finding in the affirmative on the above may oust the Reference, on that score alone. I am in clear agreement with the above contention, hence, would proceed to determine the said fact prior to returning of findings on other issues.

"10. Reference of disputes of Boards, Courts or Tribunals.- (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time,] by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

In support of the contention about the claim petition being hit by delay and latches, the ld. counsel for the petitioner has relied upon the judgment of the Hon'ble High Court of H.P. while deciding CWP in which verdict of the Hon'ble High Court of H.P., the Hon'ble Court came to draw an interpretation of the terms "any Industrial dispute exists or apprehended" as existing in sub

section 1 of section 10 of the Industrial Disputes Act while coming to interpret the aforesaid terms it relied upon a string of judicial pronouncement of the Hon'ble Apex Court, thereupon, the Hon'ble High Court of H.P. came to the conclusion that the aforesaid terms have reference and a bearing to a dispute which is not stale which would make it so by an unexplained and in ordinate lapse of time from the date its having arisen resulting in the gathering of the conclusion that it is faded.

In taking the view as it did, the Hon'ble High Court of H.P. relied upon a string of judicial pronouncements of the Hon'ble Apex Court, commencing from its verdict rendered in M/s. Shalimar Works Ltd. Vs. Their Workmen reported in 1959 SC 1217 and ending with its verdict in Madhvan Kutty's case reported in 2000 2SCC 455.

The ld. counsel appearing for the claimant has also drawn my attention towards the verdict rendered by the Apex Court reported in 1970(1) Supreme Court Cases 225, the relevant portion of which is extracted, hereinafter, to cement his contention that delay and latches are not a bar to the exercise of jurisdiction by this Tribunal and that no limitation is prescribed by the statue for the raising of an industrial dispute. However, on a reading of the hereinafter extracted relevant portion of the judgment of the Hon'ble Apex Court as relied upon by the ld. counsel for the claimant, I am of the firm view that the factual matrix of the string of judicial pronouncement relied upon the Hon'ble High Court of H.P. while deciding CWP No.398/2001 is more apposite to the core of the controversy which is the one relating to the fact whether in the light of the terms existing in sub section 1 of section 10 of the Industrial Disputes Act, Couched in the phraseology "any dispute exists or apprehended", as to whether the above terms prescribe any period of limitation for the raising, of, any industrial dispute, by, the claimant so far as to say that the dispute is in existence or is apprehended. It was only on a consideration of a string of judicial pronouncement handed down since the year 1959, that, the Hon'ble High Court of H.P. while relying upon the judgment of Hon'ble Apex Court in Nadungadi Bank Ltd. Vs. K.P. Madhavankutty and others reported in (2000) 2 SCC 455, concluded, that stale disputes do not enjoy statutory approbation, resultantly, a conclusion was formed that references comprising such stale disputes, which, they are, by, unexplained delay in their being raised hence, are to be construed to have faded and that accordingly such references are also bad. However, in the judgment of the Hon'ble Apex Court relied upon by the ld. counsel for the claimant reported in 1970(1) SCC 225, the Hon'ble Apex Court neither took to test the legality of the pronouncement in earlier judgment reported in AIR 1959 SC 1217, as the essence of the controversy in the verdict of the Hon'ble Apex Court relied upon by the ld. counsel for the claimant did not necessitate any interpretation by it of whether the terms "any dispute exists or apprehended" existing in sub section 1 of section 10 of the Industrial Dispute Act, prescribed any period of limitation for the raising of a dispute, hence, obviously the said terms remained uninterpreted, then. Rather, the controversy before the Hon'ble Apex Court in that case was whether the refusal by the competent authority to make a reference to the Tribunal can stand in the way of a subsequent reference by the Govt., to, which, controversy the Hon'ble Apex Court gave a verdict that the provisions of section 4(k) of the U.P. Industrial Dispute Act, can not be so interpreted so as to bar a second reference by the competent authority, to the Tribunal, if circumstance warrant its reference afresh after initial refusal by the Govt.. As a natural corollary, in my view the verdict relied upon by the ld. counsel for the claimant being a pronouncement upon provisions of law, not, similar to the one existing in the verdict of the Hon'ble Apex Court relied upon by the ld. counsel for the respondent which verdicts have directly dealt with the germane controversy apposite to and of aid to this Tribunal in determining whether any period of limitation is prescribed by sub section 1 of section 10 of the Industrial Disputes Act, and an interpretation of whose terms directly engaged the attention of the Hon'ble Apex Court while delivering the later decision as relied upon by the ld. counsel for the respondent and which provisions did not directly engage the attention of the Hon'ble Apex Court, while deciding the earlier case titled as M/s.

Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and others reported in 1970(1) Supreme Court Cases 225, which dis-similarity of the controversy and the scope of discussion in the two verdicts, does not persuade me to hold that the verdict relied upon by ld. counsel for the claimant clinches or lays down the ratio decidende in respect of the interpretation to be afforded to the terms "any dispute exists or apprehended" in sub section 1 of the section 10 of the Industrial Disputes Act, which terms having been interpreted by the Hon'ble Apex Court in a later verdict rendered by it Nandungadi Bank Ltd. Vs. K.P. Madhavankutty and others reported in (2000) 2 SCC 455, as such, comprises the ratio decidendi in respect of the view to be taken by the Courts of law in respect of the said terms existing in sub section 1 of section 10 of the Industrial Disputes Act and which have been interpreted to bar entertainment of stale disputes.

"9…..In the State of Madras v. C.P. Sarathy this Court held on construction of Section 10 (1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible. In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute. (Sindhu Resettlement Corporation, Ltd v. Industrial Tribunal). Such a view has been taken by the High Courts of Andhra Pradesh, Madras, Allahabad, Rajasthan, Punjab and Madhya Pradesh. [See gurumurthi (G) v. Ramulu (K), Vasudeva Rao v. State of Mysore, Rawalpindi Victory Transport Co. (P) Ltd. V. State of Punjab, Champion Cycle Industries v. State of U.P., Goodyear (India) Ltd., Jaipur v. Industrial Tribunal and Rewa Coalfields Ltd. v. Industrial Tribunal, Jabalpur]. The reason given in these decisions is that the function of the Government either under Section 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as res judicata applicable to judicial Acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief, does not affect the jurisdiction of the Government to make the reference.

14. In the present case though nearly four years had gone by since the earlier decision not to make the reference, if the Government was satisfied that its earlier decision had been arrived at on a misapprehension of facts, and therefore, required its reconsideration, neither its decision to do so nor its determination to make the reference can be challenged on the ground of want of power. The fact that the dispute between the concerned workman and the management had become an industrial dispute by its having been espoused by the union since 1957 cannot be disputed. The fact that the workman was then not a member of the union does not preclude or negative the existence of the community of interest nor can it disable the other workmen through their union from making

that dispute their own. The fact that the Government refused then to exercise its power cannot mean that the dispute had ended or was in any manner resolved. In the absence of any material it is not possible to say that with the refusal of the Government then and the dismissal of the writ petition by the High Court in March 1959 the dispute, which was already an industrial dispute, had ceased to subsist or that on Respondent 3 joining the union in July 1962 the union revived a dispute which was already dead and not in existence. His becoming a member in July 1962 was as immaterial to the power of the Government under Section 4(k) as the fact of his not being a member at the time when his cause was espoused in 1957 by the union and the dispute becoming thereupon an industrial dispute. The question of his membership, therefore, has to be kept apart from the right of the other workmen to espouse his cause and the power of the Government under Section 4(k). It may be that his becoming a member in 1962 may have been the cause of the union's subsequent efforts to persuade the Government to reconsider its decision and make a reference on proper facts being placed before it and its earlier misapprehensions removed. But that again has nothing to do with the jurisdiction of the Government under Section 4(k) of the Act. ….."

Also reliance is placed by the ld. counsel for the claimant upon a verdict of the Hon'ble Apex Court reported in (1999) 6 Supreme Court Cases 82 titled Ajaib Singh Vs. Sirhind Co-operative Marketingcum- Processing Service Society Ltd. And another the relevant, portion, of, which is relied upon by him while canvassing before this Tribunal that no period of limitation is prescribed for raising of an Industrial dispute before this Tribunal. However, not only when the said judgment of the Hon'ble Apex Court is an earlier pronouncement than the pronouncement by the Hon'ble Apex Court in Madhuvankutty case reported in (2002) 2 SCC 455, where, the question of whether any period of limitation having come to be prescribed by the Industrial Disputes Act, fell for consideration and the Hon'ble Apex Court while interpreting the provisions of sub section 1 of section 10 of the Industrial Disputes Act came to the conclusion that the relevant terms "any dispute exists or apprehended" contained in it, envisaged, a, dispute raised promptly and not a stale dispute, the, later view, of, the Hon'ble Apex Court while directly dealing with the terms relevant to determine whether the provisions of the Industrial Dispute Act envisage entertainment of stale disputes or not and having concluded that the relevant terms do not envisage entertainment of stale disputes, the later view, straight on the controversy ought to be vindicated, as in distinction to the interpretation afforded to the relevant terms of the statute by the Hon'ble Apex Court in Madhvankutty's case, with, the earlier verdict of the Hon'ble Apex Court in case titled as Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd. And another reported in (1999) 6 SCC 82, where the Hon'ble Apex Court thought it appropriate to deal with the provisions of section 10 of the Industrial Disputes Act, yet, the terms "any dispute exists or apprehended" existing in sub section 1 of the section 10 of the Industrial Disputes Act, did come to be afforded any interpretation, which terms came to be subsequently interpreted in Madhavankutty's case. The view taken by it of no period of limitation having been prescribed under the Industrial Disputes Act, was merely on the strength a conclusion that the provisions of the Limitation Act are applicable to only proceedings in courts and do not apply to applications or proceedings before those bodies other than courts, such, as Quassi Tribunal or Judicial Authorities, as an, Industrial Tribunal, is, hence, both with no specific period of limitation prescribed in the statute and with the various provisions of Limitation Act prescribing different periods of limitation in respect of matters before courts alone not applicable, to, an Industrial Tribunal, the, bar of limitation was held to be not available to oust a reference on the ground of delay. However, Madhvankutty's case, though not over ruling the verdict in Ajaib Singh's case came to the conclusion as it did form about stale claim being not comprised within the relevant terms of section 1 of the section 10 of the Industrial Disputes Act, whereas the Hon'ble Apex Court in Ajaib Singh's case depended upon the ruling in Ram Chander Morya Vs. State of Haryana, (1999) 1 SCT 141 (P&H) while skirting the core issue, which was dealt with in Madhvankutty's case and on a circumspect appraisal of an in built provision of the Industrial Disputes interpreted it and on an

interpretation, afforded by it, to the terms, 'any dispute exists or apprehended' formed the conclusion that the said terms do not comprise as "stale claim" without the necessity of relying upon the judgment as relied upon by the Hon'ble Apex Court in Ajaib Singh's case. Since a clear point of view of has been expressed in Madhvankutty's case about a period of limitation having been prescribed in the Act, though, subtly, therefore, the latter view as expressed by the Hon'ble Apex Court, on, the phraseology/terms existing in the statute itself, in my very humble view ought to carry weight, hence, I hold that the later ruling of Hon'ble Apex Court prescribes a period of limitation for raising of Industrial Dispute Act in, and since stale disputes are barred, therefore, the implicit self contained expressions, in the statute, also, ought to be revered as they were in Madhvankutty's case, without, looking elsewhere.

> "7.……This Court in Bombay Gas Co. Ltd. V. Gopal Bhiva held that the provisions of Article 181 (now Article 137) of the Limitation Act apply only to applications which were made under the Code of Civil Procedure and its extension to applications under Section 33-C(2) of the Act was not justified. This position was further reiterated and explained by this Court in Town Municipal Council, Athani v. Presiding Officer, Labour Courts. (SCC pp.882-83, paras 11-12)

11. It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. The language of Article 137 is only slightly different from that of the earlier Article 181 inasmuch as, when prescribing the three years' period of limitation, the first column giving the description of the application reads as 'any other application for which no period of limitation is provided elsewhere in this division'. In fact, the addition of the word 'other between the words 'any and 'application' would indicate that the legislature wanted to make it clear that the principle of interpretation of Article 181 on the basis of ejusdem generic should be applied when interpreting the new Article 137. This word 'other' implies a reference to earlier articles, and, consequently, in interpreting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division to the Schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure. The effect of introduction in the third division of the Schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in the case of Sha Mulchand & Co. Ltd. We think that, on the same principle, it must be held that even the further alteration made in the articles contained in the third division of the Schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary Article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.

12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the Schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. At best, the further amendment now made enlarges the scope of the third division of the Schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within

them applications to bodies other than courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purpose of limitation by Article 137.

8. In Sakuru v. Tanaji it was held that the provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The view taken by this Court in Municipal Council, Athani and Nityananda M. Joshi v. LIC of India was reiterated with approval.

11. In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that “it is true that a fight between the workman and the management is not a just fight between equals”, the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution.

12. We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with the modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8-12-1981 when he raised the demand for justice till the date of award of the Labour Court, i.e., 16-4-1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs.5000 to be paid by the respondent management.

Even, though, the ld. Authorised representative for the petitioner, has, further, echoed his resistance to the applicability of the pronouncements as extracted herein above, and, has sought to fortify his resistance by banking upon a judgment of the Hon’ble Apex Court reported in 2001 (6) SCC 2221 titled “Sapan Kumar Pandit Vs. H.P.S.E.B and other”, to contend` that no limitation is

prescribed, under the Act, however, with the Hon'ble Justice Sh. C.K. Thakker, while deciding C.W.P. 398/2001, as, is apparent from the reading of the judgment rendered by him, was aware, of, the afore relied pronouncement of the Hon'ble Apex Court, and on an incisive analysis of the verdict in Sapan Kumar Pandit's case, postulating a digression by the Hon'ble Apex Court, from the earlier view rendered in Nedungadi Bank Ltd., in, as much, as, the distinguishing mark of the deviant view taken by the Hon'ble Apex Court in Sapan Kumar Pandit's case, was the legitimate expectation, entertained by the claimant in that case on an assurance to him by the Management/employer, that, as and when, the benefits were accorded in to similarly situated co-workmen, who, had promptly raised the dispute, through, the workers Union, he, too, would being similarly situated, even, if, he had not preferred a claim, would be afforded parity of treatment with them, hence, his omission to take steps to redress his grievance at the earliest was held not to be fatal. However, the Hon'ble Apex Court did not apart from the distinguishing the facts in Sapan Kumar Pandit's case, from Nedungadi Bank Ltd. Case, decided, by it earlier, while, denouncing preferment of stale claim, did not reconsider the ratio decidendi laid by it, in Nedungadi's case, hence, the ratio decidendi in the Nedungadi's case remains interact, and is undisturbed save for the salient distinguishing mark in S.K. Pandit's case, which, alone constrained the Hon'ble Apex Court to take a dissimilar view, only on existence of an assurance , received, by the claimant in that case from his employers for re-engagement or by the existence of the some pressing cause, which precluded him to raise an industrial dispute, which facts, as they existed in S.K. Pandit's case, so, as, to comply with the deviant rule in the said case, from the preponderant view in Nedungadi's case, do not exist on the record, of this case, therefore, the ratio decedendi in Nedungadi Bank Ltd., case is applicable to the facts of this case.

Bearing in mind the above discussions hinged upon the verdict of the Hon'ble High Court of H.P. holding that the belated preferment of claim imbues it with staleness, so, as to render the reference comprising the dispute to be, also, stale, thereby rendering the reference as not maintainable and while keeping in mind the delay and latches as have taken place, since, the retrenchment of the workmen which in took place in the year 1996, the reference as has been made of the dispute by the competent authority in the year 2005 is manifestly and palpably belated, especially, when of no explanation on proof of delay thereof exists, hence stale, therefore, on account of staleness of the claim, the claim, as, preferred before this Tribunal, in my view is not maintainable being barred by delay and latches. Since the staleness of claim has been held to be not keeping the dispute alive, therefore, the conclusion is that the workman has acquiesced in it or a dispute as it then was and which ought to have been expeditiously canvassed by the workman on account of delay can be said to have been effaced or faded, so, also, the concomitant effect is that inference of abandonment can also be made. Issue decided accordingly.

Relief:

Claim Petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette.

The file after completion be consigned to the record room.

Announced
28.6.2007

Sd/-
SURESHWAR THAKUR,
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

In the Court of Shri Sureshwar Thakur, Presiding Judge, labour Courtcum-industrial Iribunal, Dharamshala, H.P.

Reference: No. 20/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Madho Ram S/o Shri Baldev Ram, Vill. Gumma, P.O. Dand, Tehsil, Salooni, District Chamba, H.P. ..*Petitioner*

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Sd/-
Announced. (SURESHWAR THAKUR),
9.7.2007 *Presiding Judge,*
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Courtcum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 113/05

Presented on: 23.7.05

Decided on: 8.6.2007

Shri Mast Ram S/o Sh. Puran Chand, Vill. Seri Kothi Gohar, P.O. Seri Koti, Tehsil, Sundernagar, Distt. Mandi, H.P. ..*Petitioner*

Versus

The Divisional Forest Officer, Sundernagar, District, Mandi, H.P. ..*Respondent.*

ORDER/AWARD

8.6.2007

Pr. None for the petitioner
Sh. H.S. Dhiman, Dy. D.A. for the respondent

The case has been called twice or thrice but none appeared on behalf of the petitioner. Be put after lunch.

Sd/-
SURESHWAR THAKUR,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

———

8.6.2007

Pr. As above

The case has been called twice or thrice. But none appeared on behalf of the petitioner. It is 3.30 P.M. Hence, the case is dismissed in default. The reference answered accordingly.

The file after its due completion be consigned to the record room.

Sd/-
Announced. (Sureshwar Thakur),
8.6.2007 *Presiding Judge,*
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

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In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Courtcum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 66/04

Presented on: 22.3.2004

Decided on: 14.6.2007

Shri Mehar Chand S/o Shri Prem Singh, Vill. And P.O. Baldwara, Tehsil, Sarkaghat, Distt. Mandi, H.P. ..*Petitioner*

Versus

The Executive Engineer, H.P.S.E.B. (Electrical) Division, Sarkaghat, District Mandi, H.P
..*Respondent.*

ORDER/AWARD

14.6.2007

Pr. None for the petitioner
Sh. J.S. Chauhan, Adv. for the respondent

The case has been called twice or thrice but none appeared on behalf of the petitioner. Be put after lunch.

Sd/-
(SURESHWAR THAKUR)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

14.6.2007

Pr. As above

The case has been called twice or thrice but none appeared on behalf of the petitioner. It is 3.30 P.M. The Reference is dismissed in default. The reference answered accordingly.

The file after due completion be consigned to the record room.

Sd/-
Announced. (SURESHWAR THAKUR,)
14.6.2007 *Presiding Judge,*
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

Before Shri Sureshwar Thakur, Presiding Judge, H.P. Labour Court-Cumindustrial Tribunal, Dharamshala, Distt. Kangra H.P. (Campt at Mandi)

Reference: No.86/2005

Presented on: 18.6.05

Decided on:8.6.2007

Sh. Muni Lal S/o Sh. Mast Ram R/o Village Sumnu, P.O. Ghiri, Tehsil, Sundernagar, Distt. Mandi, H.P. ..*Petitioner*

Versus

1. State of H.P. through Secretary I&PH, Shimla, H.P.

2. Executive Engineer, I&PH, Sundernagar, Distt. Mandi, H.P. ..*Respondents*

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Sh. L.B. Sharma, Adv.

For the respondent Sh. H.S. Dhiman, Ld. Dy. D.A

AWARD

The hereinafter extracted reference has been received for adjudication from the competent authority.

> "Whether the termination of services of Shri Muni Lal S/o Sh. Mast Ram workman by the Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. w.e.f.16.12.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of hereinabove extracted reference, the, claimant filed a statement of claim before this Tribunal asserting in it that he was engaged by the respondent as a Beldar in the year 1981 and as such continued in service under the respondent with fictional breaks upto 1985, whereafter he rendered 240 days of service in each calendar year upto his disengagement in 1995 which was brought about by an oral order. The oral disengagement of the services of the claimant by the respondent was assailed by the claimant by filing an OA before the H.P. State Administrative Tribunal which Judicial Forum afforded interim relief to the claimant, however, when the OA No.721/95 was finally disposed off by the H.P. State Administrative Tribunal for lack of jurisdiction, the, services of the claimant were again dispensed with.

Resultantly, the claimant raised an industrial dispute which resulted in a Reference being made to this Court. The disengagement of the services of the claimant by the respondent is assailed as having infracted the mandatory statutory provisions of the Industrial Dispute Act as contained in the provisions of section 25-F of the Industrial Disputes Act. Consequently, it is prayed that the disengagement of the service of the claimant by the respondent be set aside and the respondent be directed to reengage the claimant in service with all consequential benefits

The respondent contested the claim petition by the filing of a detailed reply in which in the preliminary objections it is contended that the services of the claimant has been dispensed with, as, the OA No.721/95 during whose pendency the interim relief was granted to the claimant stood dismissed, hence, with the dismissal of the OA the further continuation in service of the claimant does not survive. On merits it is contended likewise. However, it is also contended that the claim petition is barred by limitation. Nonetheless, the respondent in its reply had not contested the averment made in paragraph 3 of the claim petition about the respondent having violated the mandatory statutory provision as engrafted in the provision of section 25(G) of the Industrial Disputes Act, inasmuch, as, their having retained juniors at the time of disengagement of the service of the claimant by them.

With the filing of rejoinder in which the controversial reply of the respondent were repulsed and correspondence averments in the reply are reasserted.

On the pleadings of the parties the following issues came to be struck between the parties for determination.

1. Whether the retrenchment of the service of the claimant is in contravention of the provision of Section 25-F of I.D. Act and the provision of 25-G of the I.D. Act? OPP

2. In case, issue No.1 is proved in affirmative, to what service benefits the claimant is entitled to? ..*OPP*.

3. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No
Issue No.2	No
Issue No.	3 Claim petition dismissed.

REASONS FOR FINDINGS

Issues No.1 & 2

Since both the above issues are interconnected, hence, they are liable to be disposed off by common findings.

In proof of the assertions made by the claimant in the claim petition the claimant has stepped into the witness box and has during his examination-in-chief in coming to substantiate the assertions made in the claim petition tendered into evidence his affidavit bearing Ex. PW1/A.

On the other hand the respondent to substantiate the assertions made in their reply have depended upon Ex. RW1/A tendered into evidence by RW1.

The Ld. counsel for the claimant has contended with much vehemence that the disengagement of the services of the claimant by the respondent has come to infringe the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter and which enshrines that prior to the employer disengaging the services of the workman, it is, enjoined, to, serve upon him not only one months notice, but, also pay to him the retrenchment compensation in lieu of such notice, which requirement of law is got to be proved to have been complied with by the respondent so as to render the disengagement from the service of the claimant lawful. However, in the instant case the claimant on whom the onus of proving the factum of the respondent having infringed the mandate enshrined in the provision of section 25-F of the Industrial Disputes Act has not come to discharge the onus of proving the said issue, inasmuch, as, the bald and uncorroborated testimony of the claimant is insufficient to inspire credibility and there is no documentary evidence placed on record by the claimant to assure this Court that there was fulfillment by him of the mandatory statutory provisions as engrafted in section 25-F of the Industrial Disputes Act, which, provision enshrined the serving of one month notice to the workman by his employer or payment of retrenchment compensation to him in lieu of such notice. In case the workman has fulfilled the minimum period of qualifying service which period qualifying services is defined the provisions of section 25-B of the Industrial Disputes Act whose provision are also hereinafter extracted subsequent to the extraction of the provisions of section 25-F of the Industrial Disputes Act. Since

the mandate is couched in mandatory terms has strict compliance is enjoined for construing the disengagement to be tenable. The mandays chart as sought to be relied upon is related to one Sh. Mann Singh, hence, for lack of adequate proof with regard to rendition of statutory period of qualifying service by the claimant under the respondent so as, to enable him to assert the with his as such having rendered the period of qualifying service under the respondent, he, accordingly had the right to receive the protection of the statutory provisions which on proof of non compliance would have rendered his disengagement to be unlawful. Rather the abysmal inadequacy of proof in the above regard inasmuch, as there is no assuring oral evidence nor potent documentary evidence such want of evidence, impels me to conclude that there is no proof of infraction of the provision of section 25-F of the Industrial Disputes Act by the employer while disengaging services of the claimant, hence the disengagement from service of the claimant by the respondent is tenable on the said score.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter.- (1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Besides, the above contention as raised by ld. counsel before this Tribunal, the ld. counsel has also contended that there is violation of the provision of section 25-G of the Industrial Disputes Act necessitating that at the time of disengagement of the claimant by the employer the rule of 'Last Come First Go' was adhered to by the employer, which rule has not come to be adhered to, hence, rendering disengagement of the service of the claimant by the respondent unlawful, which factum of illegality is urged to be substantiated by the mere oral deposition of the claimant which oral deposition is insufficient to persuade to this Tribunal that it has thereby come to be substantiated, especially when despite opportunity the claimant did not take to adduce the records qua his seniority above his purported juniors which omission on his part to call for the best evidence in the above regard leads to an adverse inference against him that had such opportunity been availed, it would not have aided his case.

Issues decided accordingly.

Relief

Claim Petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette.

The file after completion be consigned to the record room.

Announced.
8.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

Before Shri Sureshwar Thakur, Presiding Judge, H.P. Labour Court-cum-Industrial Tribunal, Dharamshala, Distt. Kangra H.P. (Campt at Mandi)

Reference: No.104/06

Presented on: 30.8.2006

Decided on: 8.6.2007

Shri Naresh Kumar S/o Shri Daya Ram R/o Village Phavgla, P.O. Salater, Tehsil Kotli, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer, Irrigation and Public Health Department Division No.1, Kullu, District, Kullu, H.P.

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Sh. Bhagwan Chand vice of Sh. R.K. Khidtha, Adv.

For the respondent Sh. H.S. Dhiman, Dy.D.A.

AWARD

The hereinafter extracted reference has been received for adjudication from the competent authority.

"Whether the termination of services of Shri Naresh Kumar S/o Daya Ram workman by the Executive Engineer, I&PH Division No.1 Kullu, District Kullu, H.P. w.e.f.18.09.04 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the, claimant filed a statement of claim before this Tribunal in which he averred that he was engaged as a beldar on a daily wage basis by the respondent on 1.1.2001 and worked, as such, upto 30.6.2003 when his services were dispensed with on 1.7.2003 which resulted in his filing OA No.231/2003 before the H.P. State Administrative Tribunal. During the pendency of the OA the claimant was reinstated in service on 4.11.2003. However it is averred that on 13.8.2004 he withdrew the O.A. as instituted by him before the H. P. State Administrative Tribunal. The claimant contended that his disengagement is in violation of the mandatory statutory provision engrafted in section 25-F of the Industrial Disputes Act as despite his having rendered 240 days continuous service in the 12 calendar months proceedings his disengagement his service came to be dispensed with without serving upon him one months notice or payment of retrenchment compensation in lieu of such notice. Besides, it is contended that certain juniors named in paragraph 4 of the claim petition were continued to be retained by the respondent at the time contemporaneous to the disengagement from service of the claimant by the respondent. Resulting, in infraction of the provisions of section 25-G of the Industrial Disputes Act. Consequently it is prayed that his illegal disengagement be set aside and the respondent be directed to reinstate him in service with all consequential benefits to him.

The respondent filed a detailed reply to the claim petition in which, in, the preliminary objection accompanying the reply of the respondent, it is contended that the claim petition is barred by limitation. Besides on merits it is contended that since the claimant did not render 240 days of continuous service under the respondent in the 12 calendar months preceding his disengagement, hence, he was not entitled to receive the protection of the provision of section 25-F of the Industrial Disputes Act. Hence, violation of if any with the said provisions cannot give ground to the claimant to assail his disengagement on that score. Besides, it is contended that the persons named in paragraph 4 of the claim petition have rendered of 240 days of continuous service under the respondent which the claimant did not render. In the light of the fact that the services rendered by the claimant under the interim direction of the State Administrative Tribunal during the pendency of O.A. No.231/03 cannot be counted for the purpose of seniority of the claimant with his juniors, hence, there was no violation of the principle of "Last Come First Go".

The claimant filed rejoinder to the reply of the respondent and controverted the controversial contentions in the reply of the respondent while reasserting the averments in the claim petition.

On the pleadings of the parties the following issues came to be struck between the parties at contest.

1. Whether the disengagement from service of the petitioner is proper and justified? OPR

2. Whether the claim petition is stale and time barred? OPR

3. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	No
Issue No.3	Claim Petition is dismissed

REASONS FOR FINDINGS

Issues No.1

To prove issue no.1 onus was cast upon the respondent the onus has cast upon it for proving the legality of the disengagement of the services of the claimant by them has been sought to be discharged by them by theirs depending upon the testimony of PW2 as well as RW1.

Since the respondent was to prove by adducing cogent evidence the factum of the claimant not being entitled to receive the protection of the provisions of section 25-F of the Industrial Disputes Act, inasmuch, as, contended in their reply that since the claimant did not render the qualifying period of service as ordained by law, he was not entitled to be awarded the benefit thereof. However, the evidence as adduced by the respondent with regard to the claimant not being entitled to receive the protection of provisions of section 25-F of the Industrial Disputes Act which would come into play, only, in case the claimant had rendered 240 days of continuous service under the respondent unintermittently in the 12 calendar months though, not in each day of each 12

months but, at that for some days in each of the 12 calendar months preceeding his disengagement, is, Ex.PW2/C whose perusal discloses, that, though the claimant had rendered more than 240 days of service, yet, the period of said service rendered by the claimant is only in 11 calendar months preceeding his disengagement, whereas, the requirement of law is not of rendition of any length of service over a period of not six, seven or eight months, but, in each of the 12 calendar months preceeding the disengagement of the workman by his employer. Hence, with the mandate of law being rendition of service for 240 days in the 12 calendar months preceeding his disengagement, not more, and not less. Therefore, viewed in the light of the above interpretation to the requirement of the provision of section 25-F of the Industrial Disputes Act, while laying the rule of the necessity of the employer serving retrenchment notice or payment of retrenchment compensation in lieu of such notice, while the workman having come to prove to have rendered "continuous service" under the respondent which phraseology of "continuous service" as occurring in section 25(F) of the Industrial Disputes Act, whose provisions are extracted hereinafter has come to be not defined in section 25-F of the Industrial Disputes Act, but, has come to be defined in section 25-B of the Industrial Disputes Act whose provisions are also extracted hereinafter and with the said period of "continuous service" as defined in the provision of section 25-B of the Industrial Disputes Act signifying service by a workman for a period of 240 days under his employer in the 12 calendar months preceeding his disengagement then, in the instant case when the services rendered by the workman under his employer, is, not for a period of 12 months immediately preceeding his disengagement, then, even if he has rendered service for more than the statutory limit, yet, such rendition of service for a period more than as ordained by law, but, not fulfilling the other conditions of such rendition being spread over 12 months, the rendition of service of the claimant under the respondent only for 11 months cannot be construed to be rendition of qualifying period of service by the claimant under the respondent for the statutory period fulfilling, both, the criteria of number of days of service and of the number of the months during which such service has to be performed i.e. over a statutory period of 12 months. Hence, it cannot be said that any illegality was committed by the respondent while disengaging the workman.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(e) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(f) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,- (1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(iii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(iv) two hundred and forty days, in any other case;

(d) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(iii) ninety-five days, in the case of workman employed below ground in a mine; and

(iv) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(iv) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(v) he has been on leave with full wages, earned in the previous years;

(vi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Since, the ld. counsel, for, the claimant also urged that the disengagement of services of the claimant by the respondent, is also, in violation of the principle of 'Last Come First Go' as certain junior persons named in paragraph 4 of the claim petition, while being juniors were continued to be retained by the respondents whose retention by the respondents at the time contemporaneous to the disengagement of the claimant has contravened the principle of 'Last Come Fist Go' which contravention by the respondent in coming to do so has resulted in his disengagement to be construed to be unlawful, the said contention has also got to dealt with. The only plea which has been taken by the respondents to boost the said contention is that since the period of service rendered by the claimant under the respondents was under the interim directions of the State Administrative Tribunal, the, said period of service cannot be counted towards the total length of "continuous service" of the claimant under the respondent, hence, even if the claimant had come to be recruited on a date prior to the persons named in paragraph 4 of the claim petition, however, since there was a break in his service the said break in his service does not entitle him to be treated to be senior to the said persons, thereby, rendering unnecessary compliance by the respondent with the principle of 'Last Come Fist Go'. However, the contention as raised by the ld. counsel for the

claimant in seeking his termination from service illegal on the score of the principle of 'Last Come Fist Go' having come to be infringed by the respondent, is in my view of the least legal merit, inasmuch as, the State Administrative Tribunal while having directed the respondent to reengage the claimant in service on 4.11.2003, whereas, the claimant stood retrenched by the respondent on 1.7.2003 and when in its orders finally disposing off the OA No.231/03 it is not mentioned in it that the break in service as had occurred during the earlier service tenure of the claimant under the respondent is to be condoned or not to be condoned for the purpose of his seniority vis-à-vis his purported juniors, rather, the Administrative Tribunal in its final orders stating categorically, that, in so far, as, regards seniority/regularization, it is open to the applicant to raise the said issue in a separate application, implies that the break in service of the claimant under the respondent had not come to be condoned for the purpose of seniority, hence, when during the aforesaid period when the purported juniors to the claimant as revealed by Ex. PW2 and Ex. PW2/B had rendered services under the respondent, when obviously when the claimant's previous breaks in service had not come to be condoned, then, his initial entry into service under the directions of the H.P. State Administrative Tribunal, has, to be construed, to have occurred/taken place only on 4.11.2003 which constitute his initial entry into service, whereas, his purported juniors named Sh. Yuman Singh S/o Sh. Dayari Ram and Sh. Chhering Paljore S/o Urgyan who rendered work even from 1.8.2003 to 3.11.2003 respectively, which dates are prior to the engagement afresh of the claimant, hence, they are to be on the application of the principle of prior engagement taken to be senior in service to the claimant. Hence, on the said score, his service, prior, to its, interruption by his disengagement, while, the interruption having come to be not condoned for purpose of seniority is to be construed to be of no consequence and the purported juniors are to be treated while having worked prior to the claimant's fresh recruitment, as senior to him. As such, there cannot be said to be any infraction of the principle of "Last Come First Go" while dispensing with the services of the claimant. Issue decided accordingly.

Issue No.2

Since the claim petition be instituted with in a period of 2 years prior to the date of his disengagement from service by the respondent and with the presumption that some time is consumed from the accrual of cause of action till making of Reference by the statutory authorities under the Act, hence, time spent by such Authority cannot be taken to render the Industrial Disputes to be classified as stale. Issue decided accordingly.

Relief

Claim Petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette.

The file after completion be consigned to the record room.

Announced Sd/-

8.6.2007 (SURESHWAR THAKUR),

Presiding Judge,

LabourCourt-cum-*Industrial*

Tribunal, Dharamshala

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 18/07

Presented on:

Decided on: 9.7.2007

Shri Rajmal S/o Shri Baldev Ram, Vill. Gambhir, P.O. Drekeri, Tehsil, Salooni, District Chamba, H.P. ..*Petitioner*.

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced
9.7.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 22/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Roshan Deen S/o Shri Lalla, Village Meda, P.O. Kihar, Tehsil, Salooni, District Chamab, H.P. ..*Petitioner*.

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007

Present: Sh. K.S. Jaryal, Adv. for the petitioner
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Sd/-
Announced SURESHWAR THAKUR,
9.7.2007 *Presiding Judge,*
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

Before Shri Sureshwar Thakur, Presiding Judge, H.P. Labour Court-cum-Industrial Tribunal, Dharamshala, Distt. Kangra H.P. (Campt at Mandi)

Reference: No.83/05

Presented on: 18.6.2005

Decided on:8.6.2007

Sh. Ruldu Ram S/o Shri Paras Ram R/o Village Chirdi Tehsil Sundernagar, Distt. Mandi, H.P. ..*Petitioner*

Versus

1. State of HP through Secretary Irrigation and Public Health Department, Shimla.

2. Executive Engineer Irrigation and Public Health Division Sundernagar, Distt. Mandi, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Sh. L.B. Sharma, Adv.

For the respondent Sh. H.S. Dhiman, Ld. Dy. D.A.

AWARD

The hereinafter extracted reference has been received for adjudication from the competent authority.

"Whether the termination of services of Shri Ruldu Ram S/o Sh. Paras Ram workman by the Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. *w.e.f.*16.12.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

"1. That the applicant was engaged as a daily wage in the year 1980 as Beldar with fictional breaks upto 1985 after that the applicant has completed 240 days in the each calendar year and applicant remained as such upto 1995 on which date oral termination order was issued and service of the applicant was terminated and that order was assailed by the applicant before the H.P.A.T. Camp at Mandi vide O.A. No.714/95 and have got the stay order from the Hon'ble Court, after that applicant was in continuous service and has completed more than 240 days in each calendar year but surprisingly on dated 17.12.02 services of the applicant was again terminated due to the reason that jurisdiction of the Tribunal was ousted by the H.P. High Court Shimla and applicant was directed to approach the competent forum.

2. That consequent upon the passing of the order applicant approached the Labour Inspector S. Nagar on dated 27.12.02 and demand notice was sent to the respondent through the Labour Inspector and thereby matter was referred for conciliation and for re-engagement of the applicant in his previous place of posting along with back wages and seniority and when conciliation proceeding could not be done due to the reluctance of the respondents then the matter was referred before the Labour Commissioner Shimla.

3. That the services of the applicant was illegally terminated by the respondents, whereas the similar situated persons are working in the same place and Juniors are also working/retained and are still working under the respondents.

4. That the respondents be directed to produce the original record and Muster-roll of the applicant and similar situated Junior persons.

5. That the termination of the applicant from the service are wrong, illegal and unconstitutional and is liable to be quashed and set aside with all the consequential benefits including seniority and payments of arrears (back wages) and other benefits also. It is therefore, prayed that keeping in view the aforesaid submissions this application may kindly be allowed and the respondents be directed to re-instate the applicant in the same place in the same capacity where he was working earlier along with full back wages and period between dis-engagement and re-engagement be counted for the purpose of seniority and /or any other relief, for which the applicant shall be found, entitled in the circumstances of the case may also be awarded to the applicant and justice be done".

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

"Preliminary Objections.

1. That the present reference is not maintainable under the Industrial Disputes Act 1947 as the applicant was neither engaged nor dis-engaged by the department on its own, but the petitioner was engaged on the interim orders of the Hon'ble Tribunal dated 8.9.1995 in the O.A. (M)714/95 and ultimately on the dismissal of the O.A. stay stands vacated and service of the petitioner automatically stands terminated on the dismissal of the O.A. The reference is only w.r.t. disengagement w.e.f. 16.12.2002, which is on the dismissal of the O.A. Therefore discontinuation of petitioner is perfectly under law as a result of his failure in OA and the provision of ID Act in such case is not attracted hence, the present petition deserves to be dismissed in limine on this score alone.

On Merits:-

1. That the contents of this para are wrong and denied. However, it is submitted that the applicant has worked with the respondent on daily wages intermittently w.e.f. 1/80 to 11/88 and abandoned the job w.e.f.20.11.1986 on his own. The applicant remained absent years together i.e. for about 8 years and filed an O.A. No.714/95 before the Hon'ble H.P. Administrative Tribunal alleging his illegal termination and succeeded in obtaining interims order by misrepresenting the facts. It is submitted that any interims orders/contents depending upon the ultimate result of the OA/court case. There is no effect of interims orders in the present case. The Hon'ble Tribunal order of re-engagement the petitioners and consequently the applicant was re-engaged subject to the decision in OA in the reply to the OA. The representation has clearly stated that the petitioner has abandoned the work on his own and his services were not terminated and this dispute of abandonment and termination in the year 20.11.86 still remained undecided as the OA stands dismissed for want of jurisdiction as such the contention of the department regarding voluntary abandonment remained upheld. It is settled law that the outcome of interims orders always depends upon the final decision of the case and in the present case the OA of Petitioner stand dismissed for want of jurisdiction against the termination in 20.11.86. Thereby the interim orders automatically goes and his re-engagement of the interim orders of Tribunal has no consequences and legal force on its dismissal. Therefore, the discontinuation on the Petitioner *w.e.f.* 16.12.2002 does not attract the provision of the Industrial Disputes Act 1947 but are the result of dismissal OA. Therefore the present Petition is deserves to be dismissed in limine on this score alone.

2. That the contents of this para are wrong and denied. The department has clearly stated in the reply before the conciliation Officer that the termination of the applicant in 16.12.2002 is due to the result of dismissal of OA and the reference made by the Labour Commissioner regarding termination w.e.f. 16.12.2002 is not maintainable as the termination is perfectly legal and valid as the re-instatement of Petitioner in the year 9/95 after abandonment in 11/86 was not on its own on the due of the interim orders of the Hon'ble Tribunal. Once the OA is dismissed, the consequences, result of interim orders has not legal consequences and issuance of the interim orders automatically goes and therefore, department rightly discontinued the petitioner. The Petitioner so far as the disengagement and abandonment of work by the Petitioner in 11/86 is not adjudicable by the Labour Court as it has neither been referred to nor challenged and is therefore beyond its jurisdiction. So much so the dispute of disengagement and abandonment of work in the year in 11/86 to be adjudicated in the present petition is hopelessly barred by the limitation as well as barred by the law of estoppal. In view of the various judgments in the Hon'ble High Court of H.P. as well as Supreme Court of India.

3 to 5. That the contents of these paras are wrong and denied. This contention of the applicant is irrelevant in the facts and circumstances of the present case the termination of the applicant was as result of his failure in of applicant in O.A.

It is, therefore, prayed that the present reference petition may be answered in negative and decided in the favour of the Respondent state".

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:

"Rejoinder to the Preliminary objections:

1. That para No.1 of the Preliminary objection is wrong. It is denied that petitioner was engaged by the order of the Tribunal, in fact the petitioner was engaged by the respondents department in the year 1983 after that their/his services were terminated on 8.9.95 and petitioner has to approach the Hon'ble Tribunal and have got the stay order after that petitioner is working to the entire satisfaction of their superiors, but on 17.12.02, services of the petitioner were terminated because the jurisdiction of the Tribunal was ousted by the Apex Court, so the termination is wrong, illegal, void ab-initio.

ON MERITS:

1. That para No.1 of the reply is wrong and that para of application is reaffirmed to be correct. It is denied that petitioner has abandoned the work on his own and services of the petitioner was never terminated in fact the services of the petitioner was terminated firstly in 31.3.95 and secondly on 17.12.02. There is sufficient work available with the respondents department and petitioner was working in different, places, i.e. Khildhar, Kulh, Kansa Kulh, Jawala Kulh, Doldhar, Keran Kulh, Kapahi, Kulh, Dinak- Patta, Dhanotu Noun Jaral, Doldhar, Keran, Hiri Nalu, Jaman Jogi Kulh, Singhkothidar, Taru Jaidevi and there are permanent in nature and petitioners has worked in all those places. Rest of the allegations are denied.

2. That para No.2 of the reply is wrong and that para of the applicant is reaffirmed to be correct. The petitioner has got a right to be retained in service as the petitioner is working under the respondents deptt. since 1983 and allegations regarding continuous of the applicants through interim order are denied. If there was no work under the respondents department, they should have moved an application for vacation of the stay. It is denied that present application is hopelessly time barred.

3-5. These paras of the reply are wrong and that para of the application is reaffirmed to be correct. Prayer para of the reply is also wrong hence denied. It is therefore, prayed that in view of the aforesaid submissions the reference of the applicant may kindly be accepted and justice be done".

On the pleadings of the parties the following issues came to be struck between the parties at contest.

1. Whether the retrenchment of the service of the claimant is in contravention of the provisions of Section 25-F of I.D. Act and the provision 25-G of the I.D. Act? OPP

2. In case, issue no.1 is proved in affirmative, to what service benefits the claimant is entitled to? OPP
3. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Partly yes, partly no, the contravention of Section 25-F is proved and contravention of section 25-G is not proved.
Issue No.2	Benefits as per operative part
Issue No.3	As per operative part.

REASONS FOR FINDINGS

Issues No.1 & 2

Since both the above issues are interconnected, hence, they are liable to be disposed off by common findings.

In proof of the aforesaid issues the claimant stepped into the witness box and during the course of his examination-in-chief while coming to substantiate the averments made by him in the claim petition tendered into evidence his affidavit bearing Ex. PW1/A. However, the bald and corroborated testimony of the claimant is insufficient to conclude that the facts as deposed in Ex. PW1/A carry conclusive weight in determining that their has been any illegality communicated by the respondent while disengaging the services of the claimant.

On the other hand the respondent in support of their assertions in their reply have depended upon the testimony RW2 and tendered into evidence their affidavits bearing Ex. RW1/A and RW2/A.

Since the respondents have appended along with their reply Ex. RW2/B which is the mandays chart revealing the tenure of service performed by the claimant under the respondents, the aforesaid Ex.RW2/B, in my view, is, to be given due weightage in drawing the conclusion whether the claimant during the tenure of his service under the respondents performed the qualifying period of service under the respondents as envisaged by the provisions of section 25-F and defined in the provisions of section 25-B of the Industrial Disputes Act, both, of, which provisions of law are extracted hereinafter, so as, to, then engender an inference that then claimant was entitled to receive the protection of provision of section 25-F of the Industrial Disputes Act, only on, whose proved non compliance, by the respondent the, claimant was entitled to seek the relief that his disengagement from service is nonest and that the respondents be directed to reinstate him service.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(g) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
(h) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
(i) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(e) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(v) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(vi) two hundred and forty days, in any other case;

(f) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(v) ninety-five days, in the case of workman employed below ground in a mine; and

(vi) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(vii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(viii) he has been on leave with full wages, earned in the previous years;

(ix) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Since the phraseology “continuous service” has been defined in the provisions of section 25-B of the Industrial Disputes Act whose provisions are extracted hereinabove and the term bears the meaning “of the claimant having rendered 240 days of continuous service in the 12 calendar months preceeding his disengagement by the employer”, hence, while coming to gauge whether the period of qualifying service or the statutory period continuous service has been rendered by the claimant under the respondents, then, a ready glance at Ex. RW2/B appended with the reply of the respondents brings to the forefront a very ready inference that in the 12 calendar months preceeding his disengagement by the respondents, the claimant had rendered the requisite period of qualifying service. Obviously, then he was entitled to receive the protection of section 25-F of the Industrial Disputes Act mandating the receipt of one month notice by him and of retrenchment compensation, so as to validate his disengagement from service by the respondent, however, satisfactory potent

documentary evidence has been adduced by the respondents to portray the fact that the sine qua non/indispensable requirement has been complied with by the respondents or had not come to be infracted by them. Necessarily, then, the sequel, is, that there is proved infraction by the respondents with the condition precedent, for, validating the disengagement from service of the claimant by the respondents, which, non fulfillment/non compliance with condition precedent by the employer, renders, the disengagement from the service of the claimant to be nonest. With the result that the claimant would come to be reinstated in service. Besides, the above contention as raised by ld. counsel before this Tribunal, the ld. counsel has also contended that there is violation of the provision of section 25-G of the Industrial Disputes Act necessitating that at the time of disengagement of the claimant by the employer the rule of 'Last Come First Go' was adhered to by the employer, which rule has not come to be adhered to, hence, rendering disengagement of the service of the claimant by the respondent unlawful, which factum of illegality is urged to be substantiated by the mere oral deposition of the claimant which oral deposition is
insufficient to persuade to this Tribunal that it has thereby come to be substantiated, especially when despite opportunity the claimant did not take to adduce the records qua his seniority above his purported juniors which omission on his part to call for the best evidence in the above regard leads an adverse inference against him that had such opportunity been availed, it would not have aided his case. Issues decided accordingly.

Relief

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in the light of the fact that the claimant was a seasonal workman, so also, in the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
8.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

In The Court of Shri Sureshwar Thakur, Presiding Judge, Labour Court-Cum-Industrial Tribunal, Dharamshala, H.P.

Reference: No. 43/07

Presented on: 26.4.2007

Decided on: 9.7.2007.

Shri Dhani Ram S/o Shri Sohan Lal C/o Shri Naresh Arora, S.P. Property Linker, Ghugar Road, Bye Pass Chowk, Palampur, District Kangra, H.P. ..*Petitioner.*

Versus

Managing Director, Himachal Pradesh Wool Federation Limited, Shimla-9. ..*Respondent.*

ORDER/AWARD

9.7.2007

Pr. None for the petitioner
Sh. Rahul Sharma, Adv. for the respondent.

The case has been called twice or thrice but none appeared on behalf of the petitioner. Be put after lunch.

Sd/-
SURESHWAR THAKUR
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

9.7.2007

Pr. As above

The case has been called twice or thrice. It is 3.30 P.M. None appeared on the behalf of the petitioner. The case has been dismissed in default. The reference answered accordingly. The file after due completion be consigned to the record room.

Sd/-
Announced (SURESHWAR THAKUR),
9.7.2007 *Presiding Judge,*
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

Before Shri Sureshwar Thakur, Presiding Judge, Labour Court-Cum-Industrial Tribunal, Dharamshala, Kangra, H.P.

Reference: No.75/05

Presented on 1.6.2005

Decided on 29.6.2007

Sh. Girdhari Lal s/o Late Sh. Saran Dass R/o Village & P.O. Patrighat Tehsil, Sarkaghat, Distt. Mandi, H.P. ..*Petitioner.*

Versus

1. H.P.S.E.B. through its Secretary Vidyut Bhavan Shimla, H.P.

2. Executive Engineer, H.P.S.E.B. Division Manali, Distt. Kullu, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Miss. Namrata Rana, vice Adv. of Sh. Bimal Sharma, Adv.

For the respondent Respondent already exparte

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

"(1) That the applicant was engaged as beldar by the Executive Engineer H.P.S.E.B. Division Manali Distt. Kullu, H.P. on 21.1.96 and he remained working as such upto 2.8.98 when his services were terminated illegally by the executive engineer without serving any notice to this effect as laid down in para 14 sub para 2 of the H.P.S.E.B. Industrial Establishment Standing Orders framed and adopted by the board and without paying him any compensation in lieu of such notice therefore termination of the applicant is illegal, arbitrary and against principles of natural justice.

(2) That after the termination of the applicant the Executive Engineer H.P.S.E.B. Division Manali has engaged new person namely Sohan Lal and has thus violated Section 25-H of the Industrial Disputes Act, 1947.

(3) That the department has also engaged junior persons namely Nirmal Kumar S/o Nek Ram, Pitamber Dev and Jung Bahadur after the termination of the applicant and has thus violated section25(h) of the Industrial Disputes Act, 1947.

(4) That permanent work is available with the department and services of the applicant have been termina ted in order to deprive him of the benefit of regularization and seniority etc. and therefore termination of the applicant is illegal on this ground also.

(5) That the applicant had earlier filed an O.A. in the Honorable H.P. Administrative Tribunal against his termination but the same has been dismissed for want of jurisdiction.

(6) That the applicant then raised industrial dispute through demand notice but the department did not reconcile the matter due to which the matter was referred to the govt. and as such how the matter is before this ld tribunal.

(7) That the termination of the applicant is thus violative of various provisions of law and as such is illegal and hence liable to be quashed. It is therefore, prayed that keeping in view of the aforesaid facts the reference petition may kindly be allowed with all consequential benefits and justice be done".

On 7.6.2006 the respondent despite service and was not present in Court, hence, he was preceded against exparte. The respondent has also not contested the claim petition and not filed any reply to the statement of claim of the claimant.

The claimant led exparte evidence and has examined himself and tendered his affidavit bearing Ex. PW1/A. He has stated in it that he was engaged by the respondent no.2 and had worked w.e.f. 21.1.1996 to 2.8.1998 with the respondent.

Since the respondent has therein not to contest the pleadings or adduced evidence in rebuttal, hence, while believing the un-rebutted evidence as adduced, it can be concluded that on record that the claimant has worked with the respondent as a Beldar w.e.f. 21.1.1996 to 2.8.1998. So also, the deposition existing in Ex. PW1/A as to infraction of provisions of section 25(H) and 25(G) of the Industrial Disputes Act by the respondents in their retaining juniors contemporaneous with the disengagement of the claimant, as also, of their having engaged fresh hands subsequent to the disengagement of the claimant, and that too, without notice to him, constituting an illegality so as to vitiate the disengagement of the claimant, while not having come to be rebutted, has to be believed to be conclusive.

Even the claim comprised in the reference cannot be said to be stale, in the light of the fact specific averments in the claim petition that prior to the raising of the dispute before the statutory authorities by the claimant qua the illegal termination of the claimant by the respondent, he, had filed an O.A. before the H.P. Administrative Tribunal, which fact when has been not rebutted can be said to have attained truth, hence, constituting a good ground for the delay in the making of the Reference.

Relief.

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in the light of the fact that the claimant was a seasonal workman, so also, in the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
29.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

Before Shri Sureshwar Thakur, Presiding Judge, Labour Court-Cum- Industrial Tribunal, Dharamshala, H.P.

Reference: No.215/2003

(RBT No. 145/04)

Presented on :17.5.2002

Decided on : 5.6.2007

Sh. Gulab Singh S/o Sh. Molak Ram C/o President Bhartiya Mazdoor Sangh, Branch, Joginder Nagar, H/Q Balakrupi, PO Jalpehar, Tehsil, Joginder Nagar, Distt. Mandi, H.P.

..*Petitioner*.

Versus

1. The Superintending Engineer, H.P.P.W.D., Mechanical Circle, Palampur, Distt. Kangra, H.P.

2. The Executive Engineer, H.P.P.W.D., Mechanical Division, Shamshi, Distt. Kullu, H.P. ..*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Sh. N.L. Koundal, AR

For the respondent Sh. H.S. Dhiman, Dy.D.A.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

"1. That the workman Sh. Gulab Singh S/o Sh. Molak Ram R/o Vill. Gaduhi, P.O. Bhararu, Tehsil, Joginder Nagar, Distt. Mandi, H.P. submitted his demand through President, Bhartiya Mazdoor Sangh vide demand notice dated 01.10.2002. Where in one demand were raised and the copy of the same was endorsed to the Labour Inspector-cum-Conciliation Officer, Circle Joginder Nagar. The demand were not accepted by the respondent/managements and on account of this a failure report was sent by the Labour Inspector-cum-Conciliation Officer, Joginder Nagar and the same has been culminated in to the present dispute.

Brief facts of the case are as under:-

1. That the services of applicant/workman Sh. Gulab Singh S/o sh. Molku Ram had been appointed by the respondents on daily wage fitter (as skilled workman) in Mechanical Sub Division, Dharamshala and had been paid the daily rate of fitter on muster rolls in the year 1973 and the workman had continuously worked in the same capacity on daily wage basis upto 18.12.1980.

2. That the services of above named workman had regularized by the department through Superintending Engineer 5th Circle, H.P.P.W.D. Dharamshala vide his appointment office order No.SEV-WCE-7476-690-03 dated 6.12.1980 in the post of Mechanical Helper in the regular pay scale 70-2-80-95 instead of as fitter in the regular pay scale of Rs.100-160 revised w.e.f. 1.1.1978 Rs.400-600 and the workman had joined the services/duties on 19.12.1980 on protest in the post of Mechanical Helper (workcharge) in Mechanical Sub-Division, Dharamshala and presently the workman is working under the (H.P. P.W.D.) Mechanical Division, Shamshi, Distt. Kullu and posted at Mechanical Sub- Division, Joginder Nagar, Distt. Mandi, H.P.

3. That it is categorically mentioned here that the Govt. of Himachal Pradesh (P.W.D.) had been taken the decision to regularized the services of those daily wager workers who have been working 5 years or more continuously in the department in various posts have been regularized by the Deputy Secretary, H.P.P.W.D. Govt. of Himachal Pradesh and had been creation the 1813 Nos. posts in different trade/categories vide his letter NO.P.B.W-B-(1) 17/78 dated 4.2.1980.

(i) That on the basis of this creation /sanctioned posts in the different posts/categories the department has been filed up/ appointed 1813 Nos workmen on workcharge Industrial Establishment in the regular pay scale.

(ii) That it is specifically mentioned here that the Govt. have been sanctioned 20 posts of fitter Trade working in H.P.P.W.D. in Himachal Pradesh in the pay scale Rs.100-160 revised Rs.400-600 out of this allotment, 11 posts of fitters were distributed to Mechanical Division, H.P.P.W.D., Dharamshala under 5th Circle, H.P.P.W.D.

4. That it is specifically mention here in the mean time without any instruction from the Govt. PWD Secretary as well as Deputy Secretary the additional Chief Engineer HPPWD Shimla were own interest decided and converting the 11 posts of fitters who been already sanctioned by the Govt. and bifurcating as 5 posts in daily waged fitters and 6 posts have been given to workcharged mechanical helper and the right hood of the applicant has been deprived by the additional Chief Engineer and the additional Chief Engineer has also supersede the power of Govt. Secretary PWD, and it is also violated against the principles of natural justice, and as such the 6 posts of mechanical helper have been wrongly promoted in the posts of fitters as per direction by the additional Chief Engineer to Superintending Engineer 5th Circle Palampur vide his letter No. PWE-133/-11/78-part-V Palampur Circle/ES-111/12315-16 dated 02.07.1980 to filled up these posts, and have been fixed jointly combined seniority of these categories. i) That it is most important facts of the case is that the Government has not taken the decision to promoted the Mechanical Helper in the post of fitter as per the section post. And on the basis of seniority list of the daily waged fitter working in the Mechanical Divisioni, Dharmashala the workman placed in the Sr. No.6 of the seniority list. Hence as per the section posts 20 in the category of the fitter Mechanical and the 11 posts of fitter converting in the Mechanical Division, Dharamshala and the applicant is very much entitled his regularization in the post of fitter workcharge in the pay scale Rs.1000-160 revised Rs.400-600 w.e.f. 19.12.1980 and other allowance & consequential service benefits.

5. That it is again categorically mentioned here that the applicant/workman approached/represented to concerned authority of department from top to bottom from the date of his joining in the post of mechanical helper instead of fitter from time to time, but no action or response has been received by the applicant/workman from the department and the department authority can not be say the applicant had not represented and not pointed out his grievance for his wrong regularization.

6. That it is again specifically mentioned here from the dated of joining the services in the post of daily wage fitter and after regularization the services in the mechanical helper the work and conduct of applicant quite satisfactory and during his services to up till today and the and the applicant had worked honestly diligently and as per the direction of his superior from time to time and the applicant is continuing working in the post of fitter but the department being paying the wages of mechanical helper which is also violated under the principles of articles 39(d) of the constitutions of India as per equal work for equal pay. Hence the applicant is entitled Basic+DA and other allowances are applicable to Govt. Employees for time to time and the services of applicant be re-designated as fitter instead of mechanical helper and the applicant/workman is very much entitled for fitter grade w.e.f. date of his wrong regularization in (mechanical heldper) as pay scale 400-600 w.e.f. 19.12.1980 to 31.12.1985, as 950-1800 initial start Rs.1000-1800 *w.e.f.* 1.1.1986 to 31.12.1995 and the 5th pay commission further revised the pay scale of Govt. employees and the applicant is also entitled the pay scale of fitter cadre 3120-5160 after fixation of the wage as per direction of the Govt.. It is again mention here the Govt. of (PW) changed the policy and fixed the pay scale of fitter cadre 4020-6200 and 45-7200 as per length of service of the workmen. Hence the applicant is also entitled for the such benefits.

7. That it is further categorically mentioned here that the services of those daily wager workmen who were working in the daily wage fitter in the department and who have been completed 10 years or more than 10 years in continues services in the department upto 31.12.1993, have been regularized by the department in the same post named as Sh. Gorakh Singh S/o Sh. Ranchu Ram and Sh. Chatter Singh S/o Sh. Jawahar both are working in the Mechanical Sub Division, Joginder Nagar as daily waged fitter and both are junior to applicant/workman. The principle of LAST COME FIRST GO has also not implemented by the department under section 25(G) under the Industrial Disputes Act, 1947 as the services of above named workmen have been regularized in the fitter posts in the regular pay scales of the fitter w.e.f.1.1.1994 and no opportunity has been given to the applicant for re-designated in the post of fitter or no criteria have been fixed by the department to regularized the services of daily wager workmen.

8. Relief.

That the in view of the submissions made here in above the applicant/union humbly prays for the following reliefs:

(i) That the Hon'bel Court kindly be directed to respondent to re-designated the services of applicant as fitter instead of mechanical helper w.e.f.19.12.1980 and paying him regular pay scale of fitter cadre 400-600 and revised time to time.

(ii) That the Hon'ble Court again directed to respondent kindly be fixed in the applicant in the fitter cadre seniority as 19-12-1980 to onwards.

(iii) That the Hon'ble Court further directed to respondent to made the arrears of payment as difference from the post of mechanical helper to fitter cadre with effect onwards.

(iv) That the Hon'ble Court again directed to respondent to pay the salary+other allowances to applicant in the post of fitter as per equal work for equal pay w.e.f. 19.12.1980 to onwards, and also pay the interest @12% per year and other reliefs may kindly granted in the favor of workman and justice be done".

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:-

"PRELIMINARY SUBMISSIONS

1. That the present application is barred by limitation as the applicant has sought for relief on the basis of alleged cause of action which is arisen to him in the year 1980. As such the application is deserves to be dismissed on this score alone.

2. That on the same cause of action the petitioner filed the O.A. No.3271/2002 before the Hon'ble Tribunal which is still pending adjudication. As such the present petition is barred by the provisions of Res-judice within the meaning of section 10 of CPC. The copy of O.A. is annexed as Annexure R-1 and the reply to the same which was filed by the Department as Annexed as Annexure R-2. It is pertinent to mention here that as per the seniority list of petitioner is figuring at Sl. No.6. The copy of which is annexed as Annexure R-3.

3. That with reference to Notification No.11-23/84/2003- Mandi dated 23.4.2003 a reference petition No.140/2003 was filed by the President Bhartiya Mazdoor Sangh, Branch Joginder Nagar District Mandi (HP) agitating the cause of the present application which was disposed off as withdrawn vide order dated 11.11.2003 and copy of that order was sent to the publication is annexed herewith as Annexure R-4 for the perusal of the Hon'ble Tribunal/Court. The applicant Union in the Reference No.140/2003 had claimed following:-

(i) That the applicant/workman has been re-designated as fitter instead of mechanical helper *w.e.f.* 19.12.1980 and paying him regular pay scale of fitter cadre 400-600 and revised time to time.
(ii) That the services of applicant/workman may kindly be fixed in the fitter cadre seniority as on 19.12.1980 to onwards.
(iv) That the applicant/workman is entitled salary +other allowances of fitter cadre as per equal work for equal pay w.e.f.19.12.1980 to onwards.

Now, the applicant/union has filed the present reference petition No.215/2003 in which next date of hearing has been fixed for the reply of respondents for 14.10.2004. Therefore, the claims of the applicant is not maintainable on account of applying the principle of Resjudicata. Moreover, the case file of Reference Petition may also be persued before taking any decision in the present reference petition to admit the same for adjudication.

ON MERITS

That the contents of the un-numbered para are not denied being matter of record qua the request made by the appropriate Government to the Hon'ble Tribunal. Further it is submitted here that the claim of the applicant is not justified. As such the same deserves to be rejected. However, the parawise reply to the paras is mentioned herein below:

1. That the contents of para are not denied qua the registration and existence of B.M.S. Rest of the contents of para are wrong, false and baseless hence, denied. The petitioner may be put strict proof of the same as no resulations etc. in this regard has been annexed with the petition by the petitioner Union.

2. That in reply to the contents of para it is submitted here that Sh. Gulab Singh has already filed O.A. before the Hon'ble Tribunal as mentioned above and the same is pending adjudication. As such it is most respectfully prayed that the present proceedings may kindly be stayed in the interest of justice.

BRIEF FACTS OF THE CASE

1&2- That Sh. Gulab Singh was engaged on daily wages during 2/1973 in Mechanical Division Dharamshala. Subsequently he was appointed as 'Helper' by the Superintending Engineer, 5th Circle, H.P. PWD, Palampur vide letter No.SEV-WCE-74/76-6901-03 dated 6.12.1980 on workcharged basis in the pay scale of Rs.70-95. It is further submitted here that the applicant has accepted the appointment as Mechanical Helper workcahrged voluntarily and submitted his joining on 19.12.1980 as Helper. Rest of the contents of paras are wrong, false and baseless hence denied.

3. –That the contents of the para are wrong, false and baseless hence denied. It is submitted here that as per the policy of the Government the services of the daily wagers have to be regularized on completion of requisite qualification and subject of the availability of posts. However, the sub paras are replied as under:-

(i) That the contents of para are not denied being matter of record.

(ii) That the contents of para are also not denied being matter of record.

4. That the contents of para are wrong, false and baseless hence denied. It is further submitted here that there is no vested interest of any Officer of the Department as alleged for bifurcating the post as alleged. As such the sub para of the para is also denied.

5. That the contents of para is wrong, false and baseless hence denied. However, it is submitted here that the applicant has accepted the appointment i.e. the post of Helper by joining against the appointment for the post of Helper.

6. That the contents of para is wrong, false and baseless hence denied. It is submitted here that the applicant has joined as Helper appointed on Workcharged basis and he working as a Helper and not as Fitter. So he is entitled for the pay and benefits of Helper and not that of a Fitter.

7. That the contents of para are admitted to the extent that the applicant was appointed as a Helper as per vacancy position and situation prevailing at that time. However, he is also entitled for promotion to the post of Fitter as per R&P Rules (Copy of which is annexed herewith as Annexure R-5) and availability of vacant post. Rest of the contents of para are denied. 8.That keeping in view the facts and circumstances of the case the petition of the petitioner being devoid of any merits may kindly be dismissed with costs in the interest of justice".

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:-

"Preliminary Submission/Objection

1. That the respondents submitted the reply under section 19. It is submitted that the clause section 19 is not covered under the Industrial Dispute Act, 1947. As such the reply of respondents deserves to be dismissed on this score alone.

Reply on Preliminary Submissions

1. That the para no.1 of the preliminary submissions of the respondent that the present application barred by limitation. It is submitted that the limitation act does not applicable in the Industrial Dispute Act, 1947. As such the applicant can be raised the dispute at any time The Law

has been settled by the Apex Court titled Ajaib Singh Vs. The Sirhind Co-operative Marketing cum Processing Service Socities Ltd. and others 1989 FLR (82) SC 199 LLR- SC-529 and similar view again recalled by Hon'ble Apex Court in 2001, Case titled as Sapan Kumar Pandit vs. Utter Pradesh State Electricity Board and others, 2001 FLR –SC-90, and 2001 LLR Sc-900

2. That the para No.2 of the Preliminary Objection are admitted, and extent to that the case OA No. 3271/02 is pending before the Hon'ble Court and the applicant requested to his Advocate to withdrawn the same. Whereas the applicant is interested to defend the said reference and the OA No.3271/02 has been disposed off. The photocopy is enclosed herewith.

3. That the para No.3 of the Preliminary submissions are admitted an extent to that the appropriate Govt. referred the reference No.140/2003, between President Bhartiya Mazdoor Sangh Vs. Respondents and the another reference No.215/2003 and the applicant has decided to defend the case No.215/2003.

Reply on Merit

1. That the para No.1 of the reply of respondents are baseless, hence denied. It is submitted that the applicant is member of BMS and the Bhartiay Mazdoor Sangh is Central Trade Union and the demand raised through union, with a resulation and the matter related with records and the same has been produced and submitted at the workers evidence.

2. That the para no.2 of the reply of replying respondent are admitted and extent to the OA No.3271/02 has been disposed of as withdrawn by the applicant. Copy annexed P-1.

Reply Brief Facts of the Case.

1&2. That the paras no. 1 and 2 of the reply of the respondents that the applicant was appointed as daily waged on fitter 2/73, and there after appointed as workcharged Helper w.e.f. 19.12.1980 is correct, but the services of applicant appointed Helper, instead of fitter as per sanctioned post and on rest para matter related with records.

3. That the para No.2 of the reply of respondents are wrong hence denied, hence matter related with records.

4. That the para no.4 of the reply of respondents wrong hence not admitted. It is submitted here that the Additional Chief Engineer HPPWD Shimla bifurcating the posts of fitters matter related with records.

5. That the para No.5 of the reply of respondents are baseless, hence denied. It is submitted that the applicant joined the duties as Helper on protext . It is again submitted here that the applicant is still discharging his duties as assigned to him at time of his initial appointment on daily waged.

6. That the reply of respondents is wrong hence denied. It is submitted that the applicant never worked as Helper and the rest para related records and witness.

7. That the para No.7 of the reply are baseless as matter related with records. However, the (R&P) rules is applicable to applicants w.e.f. 1.1.86 pay scale. It is submitted here that the department have been regularized the services of fitter w.e.f. 1.1.94 to onward, but the services of applicant have not been promoted as per (R&P rules).

8. That the para no. 8 of the reply of respondent baseless, hence, denied. It is submitted here that the applicant is entitled the reliefs claimed in the petition and justice be done".

On the pleadings of the parties, this Tribunal framed the following issues between the parties at contest:

1. Whether the petitioner is entitled to be promoted w.e.f.19.12.80 as fitter instead of Mechanic helper as alleged? ..*OPP*.

2. If issue No.(1) is proved in affirmative whether the petitioner is entitled for revised pay, seniority and other consequential benefits as alleged? ..*OPP*.

3. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No relief in view of the fact that this Tribunal has no jurisdiction to try the subject matter in controversy.
Issue No.2	No
Issue No.3	Claim Petition Dismissed.

REASONS FOR FINDINGS

It has been very vehemently submitted by the ld. Dy. District Attorney who has put in appearance on behalf of the respondent that even if no issues are struck with regard to the fact as to whether this Tribunal has any jurisdiction to try the subject matter controversy, yet, the non striking of issues by this Tribunal on the above score, does, not deprive him from raising a contention, as, to this Tribunal having no jurisdiction to try the subject matter in controversy, while being, divested to do so, in, the light of the provisions of section 15 of the Administrative Tribunals Act, 1985, hence, when the above question devolves upon the jurisdiction of this Forum to decide the controversy on merits between the parties, at, lis it is capable of not only being raised orally, but also, the said question ought to be decided prior to deciding other issues as a finding in the affirmative on the said fact/question may debar this Tribunal from affording any relief to the claimant. There is tremendous weight in the oral submission of the Ld. Dy. D.A., hence, I would proceed to deal with the said submission.

While coming to deal with the submission of the Ld. Dy. D.A. in seeking an ouster of the jurisdiction of this Tribunal to try the subject matter in controversy between the parties at contest, it is necessary to extract the relevant provisions of section 15 of the Administrative Tribunals Act, 1985, whose provisions are extracted hereinafter. It is also necessary to bear in mind the definition of the term "service matter" as defined in section 3(q) of the Administrative Tribunals Act, 1985 which definition is also extracted thereafter.

15. Jurisdiction powers and authority of State Administrative Tribunals.- (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately, before that day by all Courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment to any civil service of the State or to any civil post under the State;

(b) all services matters concerning a person [not being a person referred to in Cl. (c) of this sub-section or a member, person or civilian referred to in Cl. (b) of sub-section (1) of Sec.14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or Society] owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Cl. (b), being a person whose services have been placed by any such local or other authority or Corporation [or Society] or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment".

"3 (q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation [or Society] owned or controlled by the Government, as respects-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever."

On a perusal of and on an appreciation of the provisions as extracted hereinabove the fact which emerges in the forefront is that with section 15 sub section 1 divesting all Courts of Law of jurisdiction, powers as well as authority except, the, Supreme Court of India, to, try matters concerning the recruitment to civil services or to the matter specified in clause (c) sub section 1 of section 15, hence, when the enacting statute while Creating a special forum for the adjudication of "service matters" has in unequivocal terms ousted the jurisdiction of all Courts, except the Hon'ble Supreme Court of India, therefore, this Tribunal would have no jurisdiction to try a dispute falling within the ambit of the term "service matters or with those of the matters comprised in clause (c) of sub clause 1 of the section 15 of the Administrative Tribunal Act.

What fortifies the foregoing view is that, the Enacting Statute being the Administrative Tribunals Act, in, the aforesaid extracted relevant provision, has, in relation, to, "service matters" of any person holding a "civil post" under the State and which term "service matters" has been defined in section 3 (q) of the said Act has expressly, ousted, the jurisdiction of, all courts, except, the, Supreme Court qua the aforesaid "service matters" or matters qua recruitment to any civil service of the State or to any civil post under the State, then, obviously, even, the jurisdiction of this Tribunal is ousted with respect to the matters concerning the recruitment to civil services of the State or to any civil post under the State or qua "service matters" as defined in section 3(q) of the

Administrative Tribunals Act, 1985. Hence, my mind is absolutely free from any doubt that except the Hon'ble Supreme Court of India or the Hon'ble High Court while exercising jurisdiction under Articles 226 of the Constitution of India, all, courts including this Tribunal have been divested of jurisdiction in respect of matters for whose adjudication by a Statutory Enactment, the, Administrative Tribunals for the States in the Republic of India have been created, as, is the State Administrative Tribunal for Himachal Pradesh. Now it is also to be adjudged whether the controversy between the parties at contest is with respect to the matters in relation to which by way of a statutory enactment the Administrative Tribunal for the State of H.P. has been created, inasmuch, as to whether the relief as agitated by the claimant and as is sought to be ventilated here is with respect to recruitment to any civil post or with respect to "service matters" as defined in section 3 (q) of the statutory enactment. I have the least doubt in my mind that the claimant who have been regularly appointed as a Fitter and against a regular vacancy after considering his eligibility to be regularly appointed against a regular vacancy of a Fitter now enjoys a status distinct from that of a daily wager, which, capacity of his rendering work under the respondent though could not be then construable as a capacity acquiring the tinge of a "civil post" which mantle of a "civil post", which mantle is, now donned by his appointment against a regular post of a Fitter, hence, whereas qua his employment or disengagement from service in the capacity of a daily wager, the, appropriate, Judicial Forum, governing his continuity of service as a daily wager or the legality of his disengagement as a daily wager with relief for reengagement as a daily wager, was, this Tribunal, yet, when a string of Judicial Authorities are clear in their view that any person appointed against a regular post enjoying a regular pay scale, holds a "civil post", as also when while, view is inferable from the foregoing and hereinafter discussion, hence, when the status he was hitherto holding as a daily wager' now, has been transformed to that of a regular Mechanical Helper, therefore his job now acquiring the mantle of and of his being entitled to a regular pay scale together with all incidental benefits as well as his being now subject to statutory rules and order regulating his terms and conditions of service, qua matters with regard to his recruitment to a "civil post" as, of a regular Mechanical Helper or qua the factum of his seniority over the other persons of that category are not only matters with respect to his recruitment to a "civil post" by the respondent, while, purportedly even depriving him of his earlier length of his service as a daily wager under the respondent, though, necessarily constituting qualifying service for his fitness to appointment to regular post, but, also while the claimant is seeking a relief of his being senior to other respondent, the question of his purported seniority over the respondents falls
within the ambit of "service matters" defined in section 3 (q) of the Statutory Enactment creating the H.P. State Administrative Tribunal, hence, determinable by the said Judicial Authority, therefore, obviously qua both the facets i.e. of Recruitment and Promotion, of, the controversy as sought to be redressed before this Tribunal, do not, fall within the competence of this Tribunal, being, as discussed above divested of jurisdiction in respect of the above facets of controversy. Consequently it is held that this Tribunal has no jurisdiction to decide the same. Issues answered accordingly. Reliance is placed by the AR for the petitioner upon a judgment reported in 1983 Lab.IC 1693 insustaining his contention that the Tribunal ought to continue to exercise jurisdiction in the matter, is, in my very humble view a judgment qua, only the fact when in the face of the existence of an alternative remedy, an Industrial Tribunal refuses to exercise jurisdiction, hence, it implies and presupposes that in such circumstances where an alternative remedy exists, whose, non availment may constrain an Industrial Tribunal to refuse to exercise jurisdiction which refusal would be not justifiable, that, at least then that there is jurisdiction vesting also in the Industrial Tribunal. However, when there is an ouster of jurisdiction by a statutory enactment, as, in this case, when, there is no jurisdiction vesting in this Tribunal, which ought to be exercised concurrently with another Judicial Forum so as to say that their is an alternative dispute redressal avenue, so as then, to enable me to apply the judgment as relied upon. Even otherwise in the judgment relied upon by the AR for the petitioner there is no discussion as to whether in the face of an ouster of jurisdiction of all Courts excluding the Hon'ble Apex Court, or the Hon'ble High Courts while

exercising jurisdiction under Article 226 of the Constitution of India by the statutory provision of the Administrative Tribunal Act, this, Tribunal would continue to be vested with the jurisdiction qua matters for whose adjudication a statutory body has been created, hence, in that light, also, the judgment as relied upon in inapplicable, to the subject at hand, where, the Tribunal is faced with a situation necessitating an answer as to whether jurisdiction ought to be exercised by this Tribunal on a controversy qua which it has been statutorily debarred. In other words the essential condition necessary for the application of the judgment relied upon by the AR for the petitioner being the existence of, an, alternative remedy, necessarily envisages the existence of jurisdiction, also, with this Tribunal, however, where, when it has been come to be divested by a Statutory Enactment, it, would not be a Judicial Forum enjoying concurrent jurisdiction qua controversies for whose determination an exclusive Judicial Authority has been created, conversely, the State Administrative Tribunal, created under the Administrative Tribunal Act, would, not be an alternative Judicial Forum, but, the Solitary Forum, consequently, with divestment of jurisdiction of this Tribunal any exercise, by, it over controversies as the one, at, hand, for, reasons aforesaid while falling within the ambit of the jurisdiction of the State Administrative Tribunal, would, be, untenable.

Relief

Claim petition dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
5.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

In The Court Of Shri Sureshwar Thakur, Presiding Judge, Labour Court-Cum-**Industrial Tribunal, Dharamshala, H.P.**

Reference: No. 16/07

Presented on: 28.3.2007

Decided on: 9.7.2007

Shri Hans Raj S/o Shri Diyala Ram, Vill. Kundi, P.O. Dhargala, Tehsil, Salooni, District Chamba, H.P. ..*Petitioner*.

Versus

The Divisional Manager, H.P. Forest Corporation, (Forest Working Division), Chamba, District Chamba, H.P. ..*Respondent.*

ORDER/AWARD

9.7.2007
Present: Sh. K.S. Jaryal, Adv. for the petitioner
Sh. Rakesh Mehra, Adv. vice Sh. Jai Singh
Adv. for the Respondent

Statement made by the petitioner that he wants to withdraw the present petition with liberty to take recourse to an appropriate remedy before the appropriate forum. In view of the statement duly recorded and signed by the petitioner the claim petition is dismissed as withdrawn. Reference answered accordingly. The file after due completion be consigned to the record room.

Announced
9.7.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

Before Shri Sureshwar Thakur, Presiding Judge, H.P. Industrial Tribunal–cum**- Labour Court, Dharamshala, Distt. Kangra H.P. (Camp at Mandi)**

Reference: No. 8/2005

Presented on : 18.6.2005

Decided on 14.6.2007

Sh. Kranti Kumar S/o Sh. Dina Nath R/o Vill. Mehar Tehsil and District, Mandi, H.P.
..*Petitioner*

Versus

1. Managing Director, H.R.T.C. Shimla.

2. The Regional Manager, H.R.T.C. Mandi Depot, Distt. Mandi, H.P.

..*Respondents*

Reference under section 10 of the Industrial Disputes Act, 1947.

For the petitioner Sh. M.P. Sharma, Adv.

For the respondent Sh. Lalit Guleria, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

"Whether the termination of services of Shri Kranti Kumar S/o Shri Dina Nath workman by the (1) Managing Director, HRTC, Shimla, H.P. (2) The Regional Manager, H.R.T.C. Mandi, H.P. w.e.f.13.2.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of consequential service benefits including re-instatement, seniority, backwages and amount of compensation the above aggrieved workman is entitled?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averment in it that he was initially engaged as a Computer Clerk for 89 days by the respondent on contract basis from 20.8.1998. Thereafter he came to be engaged on a part time clerk-cum-typist for a period of 89 days. The petitioner has been as such continuously rendering work as a clerk-cum-typist with the respondent and orders for his reengagement on expiry of 89 days had been issued from time to time by the respondent upto 12.2.2001. It is averred in the claim petition that the claimant rendered 240 days of continuous service under the respondent in the 12 calendar months preceeding his disengagement from service, as, the fictional artificial breaks administered by the respondent during the tenure of his service under the respondent being legally fallible are to be discounted while computing the period of qualifying service. Hence, having rendered the requisite of qualifying service, it is averred that the respondent in having disengaged him from service in contravention of the mandatory statutory provision contained in Industrial Disputes Act have committed an illegality. It is, therefore prayed that the disengagement from service of the claimant by the respondent be set aside and all consequential ensuing benefits be made available to the claimant. The respondent filed a detailed reply to the claim petition wherein it was averred that the claimant was engaged merely on a contract basis w.e.f. 20.8.1998 for 89 days in respect it whereof it entered into an agreement with the respondent as demonstrated by Annexure-R1. The disengagement from service of the claimant by the respondent is defended on the score, that, on completion of the period of contract, his, service came to an automatic end, hence, he was not entitled to receive the benefit of the mandatory statutory provisions. Consequently it is prayed that since the provision of Industrial Disputes Act then are not applicable to the disengagement of the service of the claimant on expiry of the period of contract under which he has engaged, the prayer for relief is devoid, of merits and it is to be denied.

On the pleadings of the parties the following issues came to be struck between the parties at contest:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 13.2.2001, without complying the provisions of I.D. Act, in an improper and illegal manner? ..*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*

3. Whether the petitioner was engaged on contract basis, if so its effect? ..*OPR.*

4. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No
Issue No.2	No relief
Issue No.3	Not pressed
Issue No.4	Claim petition dismissed.

REASONS FOR FINDINGS

Issues No.1 & 2

Since both these issues are interlinked, hence, taken up together and are disposed off by common findings.

In proof of the above issues the claimant has stepped into the witness box and has while testifying during the course of his examination-in-chief sought to corroborate the assertions in the claim petition by tendering his affidavit bearing Ex. PW1/A.

On the other hand the respondent in support of their contentions existing in their reply have relied upon the testimony RW1 and who has tendered his affidavit bearing Ex.RW1/A which is in conflict with the pleadings existing in the reply of the respondent, hence, unreliable, so as to enable this Court to construe the same as the basis for computing the number of days the claimant rendered service.

Therefore, the Ld. counsel for the claimant has contended with much vehemence that the disengagement of the services of the claimant by the respondent has come to infringe the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter and which enshrines that prior to the employer disengaging the services of the workman, it is, enjoined, to, serve upon him not only one months notice, but, also pay to him the retrenchment compensation in lieu of such notice, which requirement of law is got to be proved to have been complied with by the respondent so as to render the disengagement from the service of the claimant lawful. However, in the instant case the claimant, on, whom the onus of proving the factum of the respondent having infringed the mandate enshrined in the provision of section 25-F of the Industrial Disputes Act, has, not come to discharge the onus of proving the said issue, inasmuch, as, the bald and uncorroborated testimony of the claimant is insufficient to inspire credibility and there is no documentary evidence placed on record by the claimant to assure this Court that there was fulfillment by him of the mandatory statutory provisions as engrafted in section 25-F of the Industrial Disputes Act, which, provision enshrines the serving of one month notice to the workman by his employer or payment of retrenchment compensation to him in lieu of such notice, in case, the workman has fulfilled the minimum period of qualifying service which period qualifying services is defined the provisions of section 25-B of the Industrial Disputes Act whose provision, are, also, hereinafter extracted subsequent to the extraction of the provisions of section 25-F of the Industrial Disputes Act.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(j) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(k) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(l) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(g) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(vii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(viii) two hundred and forty days, in any other case;

(h) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(vii) ninety-five days, in the case of workman employed below ground in a mine; and

(viii) one hundred and twenty days, in any other case.

Explanation : For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(x) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xi) he has been on leave with full wages, earned in the previous years;

(xii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Since the mandate of law is couched in mandatory terms its strict compliance is enjoined for construing the disengagement to be tenable.

The period of services as has been rendered for 89 days on contract basis by the claimant under the respondent with breaks more than of one day, hence, not fictional so as not to interrupt the continuity in service, also then, not condonable, is given below:

Sl. No.	**Period (From)**	**Period upto**	**Total Days**
1.	24.8.1998	31.8.98	8 days
2.	1.9.98	30.9.98	30 days
3.	1.10.98	31.10.98	31 days
4.	1.11.98	20.11.98	20 days
		Total Days	**89 Days**
		Break in service	**21.11.98-9.2.98**
5.	10.2.99	28.2.99	18 days
6.	1.3.99	31.3.99	31 days
7.	1.4.99	30.4.99	30 days
8.	1.5.99	10.5.99	10 days
		Total Days	**89 days**
		Break in service	**11.5.99-15.11.99**
9.	16.11.99	30.11.99	14 days
10.	1.12.99	31.12.99	31 days
11.	1.1.2000	31.1.2000	31 days
12.	1.2.2000	13.2.2000	13 days
		Total Days	**89 days**
		Break in service	**14.2.2000**
13	15.2.2000	28.2.2000	13 days
14.	1.3.2000	31.3.2000	31 days
15.	1.4.2000	30.4.2000	30 days
16.	1.5.2000	15.5.2000	15 days
		Total Days	**89 days**
		Break in service	**16.5.2000-15.11.2000**
17.	16.11.2000	30.11.2000	15 days
18.	1.12.2000	31.12.2000	31 days
19.	1.1.2001	31.1.2001	31 days
20.	1.2.2001	12.2.2001	12 days
		Total Days	**89 days**

The Table as drawn up on the basis of pleadings on the record existing in the reply of the respondent long with its annexures which have not been rebutted by way of rejoinder, whose perusal discloses that n the preceding 12 calendar months the claimant has not rendered the statutory period of qualifying ervice, nor, are the breaks for a period so as to be construable to be fictional, hence condonable, herefore, when the breaks in service demonstrative of lack of continuity of service by the claimant in ach of the 12 preceding calendar months, hence, when, obviously, the condition precedent for the laimant to assert that the respondent was then enjoined to comply with the provisions of section 25-F f the Industrial Disputes Act before coming to

disengage him has not been fulfilled, therefore, the isengagement of the claimant by the respondent without its compliance does not render his isengagement to be illegal. Issues decided accordingly.

Issue No.3

During the course of argument, this issue was not pressed before me, hence, this issue decided as unpressed.

Relief

Claim Petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette.

The file after completion be consigned to the record room.

Announced
14.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

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In the Court of Shri Sureshwar Thakur, Presiding Judge, Labour Court cum- **Industrial Tribunal, Dharamshala, H.P.**

Reference: No 3/05

Presented on:27.4.07

Decided on: 8.6.2007

Shri Madhav Ram S/o Sh. Paras Ram, Village, Ropa, P.O. Seri, Tehsil, Sundernagar, District, Mandi, H.P. & Ors. ..*Petitioner*

Versus

The Divisional Forest Officer, Sundernagar, District, Mandi, H.P. ..*Respondent.*

ORDER/AWARD

8.6.2007

Pr. None for the petitioner
Sh. H.S. Dhiman, Dy. D.A. for the respondent

The case has been called twice or thrice but none appeared on behalf of the petitioner. Be put after lunch.

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

8.6.2007

Pr. As above

The case has been called twice or thrice. But none appeared on behalf of the petitioner. It is 3.30 P.M. Hence, the case is dismissed in default. The reference answered accordingly. The file after its due completion be consigned to the record room.

Sd/-
Announced (SURESHWAR THAKUR),
8.6.2007 *Presiding Judge,*
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

Before Shri Sureshwar Thakur, Presiding Judge, Labour Court-cum **Industrial Tribunal, Dharamshala, H.P.**

Reference: No.215/2003

(RBT No. 145/04)

Presented on :17.5.2002

Decided on : 5.6.2007

Sh. Gulab Singh S/o Sh. Molak Ram C/o President Bhartiya Mazdoor Sangh, Branch, Joginder Nagar, H/Q Balakrupi, PO Jalpehar, Tehsil, Joginder Nagar, Distt. Mandi, H.P.
..*Petitioner.*

Versus

3. The Superintending Engineer, H.P.P.W.D., Mechanical Circle, Palampur, Distt. Kangra, H.P.

4. The Executive Engineer, H.P.P.W.D., Mechanical Division, Shamshi, Distt. Kullu, H.P. ..*Respondents*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner Sh. N.L. Koundal, AR

For the respondent Sh. H.S. Dhiman, Dy.D.A.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

"1. That the workman Sh. Gulab Singh S/o Sh. Molak Ram R/o Vill. Gaduhi, P.O. Bhararu, Tehsil, Joginder Nagar, Distt. Mandi, H.P. submitted his demand through President, Bhartiya Mazdoor Sangh vide demand notice dated 01.10.2002. Where in one demand were raised and the copy of the same was endorsed to the Labour Inspector-cum-Conciliation Officer, Circle Joginder Nagar. The demand were not accepted by the respondent/managements and on account of this a failure report was sent by the Labour Inspector-cum-Conciliation Officer, Joginder Nagar and the same has been culminated in to the present dispute.

Brief facts of the case are as under:-

1. That the services of applicant/workman Sh. Gulab Singh S/o sh. Molku Ram had been appointed by the respondents on daily wage fitter (as skilled workman) in Mechanical Sub Division, Dharamshala and had been paid the daily rate of fitter on muster rolls in the year 1973 and the workman had continuously worked in the same capacity on daily wage basis upto 18.12.1980.

2. That the services of above named workman had regularized by the department through Superintending Engineer 5th Circle, H.P.P.W.D. Dharamshala vide his appointment office order No.SEV-WCE-7476-690-03 dated 6.12.1980 in the post of Mechanical Helper in the regular pay scale 70-2-80-95 instead of as fitter in the regular pay scale of Rs.100-160 revised w.e.f. 1.1.1978 Rs.400-600 and the workman had joined the services/duties on 19.12.1980 on protest in the post of Mechanical Helper (workcharge) in Mechanical Sub-Division, Dharamshala and presently the workman is working under the (H.P.P.W.D.) Mechanical Division, Shamshi, Distt. Kullu and posted at Mechanical Sub-Division, Joginder Nagar, Distt. Mandi, H.P.

3. That it is categorically mentioned here that the Govt. of Himachal Pradesh (P.W.D.) had been taken the decision to regularized the services of those daily wager workers who have been working 5 years or more continuously in the department in various posts have been regularized by the Deputy Secretary, H.P.P.W.D. Govt. of Himachal Pradesh and had been creation the 1813 Nos. posts in different trade/categories vide his letter NO.P.B.W-B-(1) 17/78 dated 4.2.1980.

(i) That on the basis of this creation /sanctioned posts in the different posts/categories the department has been filed up/ appointed 1813 Nos workmen on workcharge Industrial Establishment in the regular pay scale.

(ii) That it is specifically mentioned here that the Govt. have been sanctioned 20 posts of fitter Trade working in H.P.P.W.D. in Himachal Pradesh in the pay scale Rs.100-160

revised Rs.400-600 out of this allotment, 11 posts of fitters were distributed to Mechanical Division, H.P.P.W.D., Dharamshala under 5th Circle, H.P.P.W.D.

4. That it is specifically mention here in the mean time without any instruction from the Govt. PWD Secretary as well as Deputy Secretary the additional Chief Engineer HPPWD Shimla were own interest decided and converting the 11 posts of fitters who been already sanctioned by the Govt. and bifurcating as 5 posts in daily waged fitters and 6 posts have been given to workcharged mechanical helper and the right hood of the applicant has been deprived by the additional Chief Engineer and the additional Chief Engineer has also supersede the power of Govt. Secretary PWD, and it is also violated against the principles of natural justice, and as such the 6 posts of mechanical helper have been wrongly promoted in the posts of fitters as per direction by the additional Chief Engineer to Superintending Engineer 5th Circle Palampur vide his letter No. PWE-133/-11/78-part-V Palampur Circle/ES-111/12315-16 dated 02.07.1980 to filled up these posts, and have been fixed jointly combined seniority of these categories.

(i) That it is most important facts of the case is that the Government has not taken the decision to promoted the Mechanical Helper in the post of fitter as per the section post. And on the basis of seniority list of the daily waged fitter working in the Mechanical Divisioni, Dharmashala the workman placed in the Sr. No.6 of the seniority list. Hence as per the section posts 20 in the category of the fitter Mechanical and the 11 posts of fitter converting in the Mechanical Division, Dharamshala and the applicant is very much entitled his regularization in the post of fitter workcharge in the pay scale Rs.1000-160 revised Rs.400-600 w.e.f. 19.12.1980 and other allowance & consequential service benefits.

5. That it is again categorically mentioned here that the applicant/workman approached/represented to concerned authority of department from top to bottom from the date of his joining in the post of mechanical helper instead of fitter from time to time, but no action or response has been received by the applicant/workman from the department and the department authority can not be say the applicant had not represented and not pointed out his grievance for his wrong regularization.

6. That it is again specifically mentioned here from the dated of joining the services in the post of daily wage fitter and after regularization the services in the mechanical helper the work and conduct of applicant quite satisfactory and during his services to up till today and the and the applicant had worked honestly diligently and as per the direction of his superior from time to time and the applicant is continuing working in the post of fitter but the department being paying the wages of mechanical helper which is also violated under the principles of articles 39(d) of the constitutions of India as per equal work for equal pay. Hence the applicant is entitled Basic+DA and other allowances are applicable to Govt. Employees for time to time and the services of applicant be re-designated as fitter instead of mechanical helper and the applicant/workman is very much entitled for fitter grade w.e.f. date of his wrong regularization in (mechanical heldper) as pay scale 400-600 w.e.f. 19.12.1980 to 31.12.1985, as 950-1800 initial start Rs.1000-1800 w.e.f. 1.1.1986 to 31.12.1995 and the 5th pay commission further revised the pay scale of Govt. employees and the applicant is also entitled the pay scale of fitter cadre 3120-5160 after fixation of the wage as per direction of the Govt.. It is again mention here the Govt. of (PW) changed the policy and fixed the pay scale of fitter cadre 4020-6200 and 45-7200 as per length of service of the workmen. Hence the applicant is also entitled for the such benefits.

7. That it is further categorically mentioned here that the services of those daily wager workmen who were working in the daily wage fitter in the department and who have been

completed 10 years or more than 10 years in continues services in the department upto 31.12.1993, have been regularized by the department in the same post named as Sh. Gorakh Singh S/o Sh. Ranchu Ram and Sh. Chatter Singh S/o Sh. Jawahar both are working in the Mechanical Sub Division, Joginder Nagar as daily waged fitter and both are junior to applicant/workman. The principle of LAST COME FIRST GO has also not implemented by the department under section 25(G) under the Industrial Disputes Act, 1947 as the services of above named workmen have been regularized in the fitter posts in the regular pay scales of the fitter w.e.f.1.1.1994 and no opportunity has been given to the applicant for re-designated in the post of fitter or no criteria have been fixed by the department to regularized the services of daily wager workmen.

8. Relief.

That the in view of the submissions made here in above the applicant/union humbly prays for the following reliefs:

(i) That the Hon'bel Court kindly be directed to respondent to re-designated the services of applicant as fitter instead of mechanical helper w.e.f.19.12.1980 and paying him regular pay scale of fitter cadre 400-600 and revised time to time.

(ii) That the Hon'ble Court again directed to respondent kindly be fixed in the applicant in the fitter cadre seniority as 19-12-1980 to onwards.

(iii) That the Hon'ble Court further directed to respondent to made the arrears of payment as difference from the post of mechanical helper to fitter cadre with effect onwards.

(iv) That the Hon'ble Court again directed to respondent to pay the salary+other allowances to applicant in the post of fitter as per equal work for equal pay w.e.f. 19.12.1980 to onwards, and also pay the interest @12% per year and other reliefs may kindly granted in the favor of workman and justice be done".

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:-

PRELIMINARY SUBMISSIONS

1. That the present application is barred by limitation as the applicant has sought for relief on the basis of alleged cause of action which is arisen to him in the year 1980. As such the application is deserves to be dismissed on this score alone.

2. That on the same cause of action the petitioner filed the O.A. No.3271/2002 before the Hon'ble Tribunal which is still pending adjudication. As such the present petition is barred by the provisions of Res-judice within the meaning of section 10 of CPC. The copy of O.A. is annexed as Annexure R-1 and the reply to the same which was filed by the Department as Annexed as Annexure R-2. It is pertinent to mention here that as per the seniority list of petitioner is figuring at Sl. No.6. The copy of which is annexed as Annexure R-3.

3. That with reference to Notification No.11-23/84/2003- Mandi dated 23.4.2003 a reference petition No.140/2003 was filed by the President Bhartiya Mazdoor Sangh, Branch Joginder Nagar District Mandi (HP) agitating the cause of the present application which was disposed off as withdrawn vide order dated 11.11.2003 and copy of that order was sent to the

publication is annexed herewith as Annexure R-4 for the perusal of the Hon'ble Tribunal/Court. The applicant Union in the Reference No.140/2003 had claimed following:-

(i) That the applicant/workman has been re-designated as fitter instead of mechanical helper w.e.f. 19.12.1980 and paying him regular pay scale of fitter cadre 400-600 and revised time to time.

(ii) That the services of applicant/workman may kindly be fixed in the fitter cadre seniority as on 19.12.1980 to onwards.

(iv) That the applicant/workman is entitled salary +other allowances of fitter cadre as per equal work for equal pay w.e.f.19.12.1980 to onwards.

Now, the applicant/union has filed the present reference petition No.215/2003 in which next date of hearing has been fixed for the reply of respondents for 14.10.2004. Therefore, the claims of the applicant is not maintainable on account of applying the principle of Resjudicata. Moreover, the case file of Reference Petition may also be persued before taking any decision in the present reference petition to admit the same for adjudication.

ON MERITS

That the contents of the un-numbered para are not denied being matter of record qua the request made by the appropriate Government to the Hon'ble Tribunal. Further it is submitted here that the claim of the applicant is not justified. As such the same deserves to be rejected. However, the parawise reply to the paras is mentioned herein below:

1. That the contents of para are not denied qua the registration and existence of B.M.S. Rest of the contents of para are wrong, false and baseless hence, denied. The petitioner may be put strict proof of the same as no resulations etc. in this regard has been annexed with the petition by the petitioner Union.

2. That in reply to the contents of para it is submitted here that Sh. Gulab Singh has already filed O.A. before the Hon'ble Tribunal as mentioned above and the same is pending adjudication. As such it is most respectfully prayed that the present proceedings may kindly be stayed in the interest of justice.

BRIEF FACTS OF THE CASE

1&2 -That Sh. Gulab Singh was engaged on daily wages during 2/1973 in Mechanical Division Dharamshala. Subsequently he was appointed as 'Helper' by the Superintending Engineer, 5th Circle, H.P. PWD, Palampur vide letter No.SEV-WCE-74/76-6901-03 dated 6.12.1980 on workcharged basis in the pay scale of Rs.70-95. It is further submitted here that the applicant has accepted the appointment as Mechanical Helper workcahrged voluntarily and submitted his joining on 19.12.1980 as Helper. Rest of the contents of paras are wrong, false and baseless hence denied.

3. –That the contents of the para are wrong, false and baseless hence denied. It is submitted here that as per the policy of the Government the services of the daily wagers have to be regularized on completion of requisite qualification and subject of the availability of posts. However, the sub paras are replied as under:-

(i) That the contents of para are not denied being matter of record.

(ii) That the contents of para are also not denied being matter of record.

4. That the contents of para are wrong, false and baseless hence denied. It is further submitted here that there is no vested interest of any Officer of the Department as alleged for bifurcating the post as alleged. As such the sub para of the para is also denied.

5. That the contents of para is wrong, false and baseless hence denied. However, it is submitted here that the applicant has accepted the appointment i.e. the post of Helper by joining against the appointment for the post of Helper.

6. That the contents of para is wrong, false and baseless hence denied. It is submitted here that the applicant has joined as Helper appointed on Workcharged basis and he working as a Helper and not as Fitter. So he is entitled for the pay and benefits of Helper and not that of a Fitter.

7. That the contents of para are admitted to the extent that the applicant was appointed as a Helper as per vacancy position and situation prevailing at that time. However, he is also entitled for promotion to the post of Fitter as per R&P Rules (Copy of which is annexed herewith as Annexure R-5) and availability of vacant post. Rest of the contents of para are denied.

8. That keeping in view the facts and circumstances of the case the petition of the petitioner being devoid of any merits may kindly be dismissed with costs in the interest of justice".

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:-

PRELIMINARY SUBMISSION/OBJECTION

1. That the respondents submitted the reply under section 19. It is submitted that the clause section 19 is not covered under the Industrial Dispute Act, 1947. As such the reply of respondents deserves to be dismissed on this score alone.

Reply on Preliminary Submissions

1. That the para no.1 of the preliminary submissions of the respondent that the present application barred by limitation. It is submitted that the limitation act does not applicable in the Industrial Dispute Act, 1947. As such the applicant can be raised the dispute at any time The Law has been settled by the Apex Court titled Ajaib Singh Vs. The Sirhind Co-operative Marketing cum Processing Service Socities Ltd. and others 1989 FLR (82) SC 199 LLR- SC-529 and similar view again recalled by Hon'ble Apex Court in 2001, Case titled as Sapan Kumar Pandit vs. Utter Pradesh State Electricity Board and others, 2001 FLR –SC-90, and 2001 LLR Sc-900

2. That the para No.2 of the Preliminary Objection are admitted, and extent to that the case OA No. 3271/02 is pending before the Hon'ble Court and the applicant requested to his Advocate to withdrawn the same. Whereas the applicant is interested to defend the said reference and the OA No.3271/02 has been disposed off. The photocopy is enclosed herewith.

3. That the para No.3 of the Preliminary submissions are admitted an extent to that the appropriate Govt. referred the reference No.140/2003, between President Bhartiya Mazdoor Sangh Vs. Respondents and the another reference No.215/2003 and the applicant has decided to defend the case No.215/2003.

Reply on Merit

1. That the para No.1 of the reply of respondents are baseless, hence denied. It is submitted that the applicant is member of BMS and the Bhartiay Mazdoor Sangh is Central Trade Union and the demand raised through union, with a resulation and the matter related with records and the same has been produced and submitted at the workers evidence.

2. That the para no.2 of the reply of replying respondent are admitted and extent to the OA No.3271/02 has been disposed of as withdrawn by the applicant. Copy annexed P-1.

Reply Brief Facts of the Case

1&2. That the paras no. 1 and 2 of the reply of the respondents that the applicant was appointed as daily waged on fitter 2/73, and there after appointed as workcharged Helper w.e.f. 19.12.1980 is correct, but the services of applicant appointed Helper, instead of fitter as per sanctioned post and on rest para matter related with records.

3. That the para No.2 of the reply of respondents are wrong hence denied, hence matter related with records.

4. That the para no.4 of the reply of respondents wrong hence not admitted. It is submitted here that the Additional Chief Engineer HPPWD Shimla bifurcating the posts of fitters matter related with records.

5. That the para No.5 of the reply of respondents are baseless, hence denied. It is submitted that the applicant joined the duties as Helper on protext . It is again submitted here that the applicant is still discharging his duties as assigned to him at time of his initial appointment on daily waged.

6. That the reply of respondents is wrong hence denied. It is submitted that the applicant never worked as Helper and the rest para related records and witness.

7. That the para No.7 of the reply are baseless as matter related with records. However, the (R&P) rules is applicable to applicants w.e.f. 1.1.86 pay scale. It is submitted here that the department have been regularized the services of fitter w.e.f. 1.1.94 to onward, but the services of applicant have not been promoted as per (R&P rules).

8. That the para no. 8 of the reply of respondent baseless, hence, denied. It is submitted here that the applicant is entitled the reliefs claimed in the petition and justice be done".

On the pleadings of the parties, this Tribunal framed the following issues between the parties at contest:

4. Whether the petitioner is entitled to be promoted w.e.f.19.12.80 as fitter instead of Mechanic helper as alleged? ..*OPP.*

5. If issue No.(1) is proved in affirmative whether the petitioner is entitled for revised pay, seniority and other consequential benefits as alleged? ..*OPP.*

6. Relief

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No relief in view of the fact that this Tribunal has no jurisdiction to try the subject matter in controversy.
Issue No.2	No
Issue No.3	Claim Petition Dismissed.

REASONS FOR FINDINGS

It has been very vehemently submitted by the ld. Dy. District Attorney who has put in appearance on behalf of the respondent that even if no issues are struck with regard to the fact as to whether this Tribunal has any jurisdiction to try the subject matter controversy, yet, the non striking of issues by this Tribunal on the above score, does, not deprive him from raising a contention, as, to this Tribunal having no jurisdiction to try the subject matter in controversy, while being, divested to do so, in, the light of the provisions of section 15 of the Administrative Tribunals Act, 1985, hence, when the above question devolves upon the jurisdiction of this Forum to decide the controversy on merits between the parties, at, lis it is capable of not only being raised orally, but also, the said question ought to be decided prior to deciding other issues as a finding in the affirmative on the said fact/question may debar this Tribunal from affording any relief to the claimant. There is tremendous weight in the oral submission of the Ld. Dy. D.A., hence, I would proceed to deal with the said submission. While coming to deal with the submission of the Ld. Dy. D.A. in seeking an ouster of the jurisdiction of this Tribunal to try the subject matter in controversy between the parties at contest, it is necessary to extract the relevant provisions of section 15 of the Administrative Tribunals Act, 1985, whose provisions are extracted hereinafter. It is also necessary to bear in mind the definition of the term “service matter” as defined in section 3(q) of the Administrative Tribunals Act, 1985 which definition is also extracted thereafter.

15. Jurisdiction powers and authority of State Administrative Tribunals.- (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately, before that day by all Courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment to any civil service of the State or to any civil post under the State;

(b) all services matters concerning a person [not being a person referred to in Cl. (c) of this sub-section or a member, person or civilian referred to in Cl. (b) of sub-section (1) of Sec.14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation [or Society] owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Cl. (b), being a person whose services have been placed by any such local or other authority or

Corporation [or Society] or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment".

"3 (q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation [or Society] owned or controlled by the Government, as respects

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever."

On a perusal of and on an appreciation of the provisions as extracted hereinabove the fact which emerges in the forefront is that with section 15 sub section 1 divesting all Courts of Law of jurisdiction, powers as well as authority except, the, Supreme Court of India, to, try matters concerning the recruitment to civil services or to the matter specified in clause (c) sub section 1 of section 15, hence, when the enacting statute while Creating a special forum for the adjudication of "service matters" has in unequivocal terms ousted the jurisdiction of all Courts, except the Hon'ble Supreme Court of India, therefore, this Tribunal would have no jurisdiction to try a dispute falling within the ambit of the term "service matters or with those of the matters comprised in clause (c) of sub clause 1 of the section 15 of the Administrative Tribunal Act.

What fortifies the foregoing view is that, the Enacting Statute being the Administrative Tribunals Act, in, the aforesaid extracted relevant provision, has, in relation, to, "service matters" of any person holding a "civil post" under the State and which term "service matters" has been defined in section 3 (q) of the said Act has expressly, ousted, the jurisdiction of, all courts, except, the, Supreme Court qua the aforesaid "service matters" or matters qua recruitment to any civil service of the State or to any civil post under the State, then, obviously, even, the jurisdiction of this Tribunal is ousted with respect to the matters concerning the recruitment to civil services of the State or to any civil post under the State or qua "service matters" as defined in section 3(q) of the Administrative Tribunals Act, 1985. Hence, my mind is absolutely free from any doubt that except the Hon'ble Supreme Court of India or the Hon'ble High Court while exercising jurisdiction under Articles 226 of the Constitution of India, all, courts including this Tribunal have been divested of jurisdiction in respect of matters for whose
adjudication by a Statutory Enactment, the, Administrative Tribunals for the States in the Republic of India have been created, as, is the State Administrative Tribunal for Himachal Pradesh.

Now it is also to be adjudged whether the controversy between the parties at contest is with respect to the matters in relation to which by way of a statutory enactment the Administrative Tribunal for the State of H.P. has been created, inasmuch, as to whether the relief as agitated by the claimant and as is sought to be ventilated here is with respect to recruitment to any civil post or with respect to "service matters" as defined in section 3 (q) of the statutory enactment. I have the least doubt in my mind that the claimant who have been regularly appointed as a Fitter and against

a regular vacancy after considering his eligibility to be regularly appointed against a regular vacancy of a Fitter now enjoys a status distinct from that of a daily wager, which, capacity of his rendering work under the respondent though could not be then construable as a capacity acquiring the tinge of a "civil post" which mantle of a "civil post", which mantle is, now donned by his appointment against a regular post of a Fitter, hence, whereas qua his employment or disengagement from service in the capacity of a daily wager, the, appropriate, Judicial Forum, governing his continuity of service as a daily wager or the legality of his disengagement as a daily wager with relief for reengagement as a daily wager, was, this Tribunal, yet, when a string of Judicial Authorities are clear in their view that any person appointed against a regular post enjoying a regular pay scale, holds a "civil post", as also when while, view is inferable from the foregoing and hereinafter discussion, hence, when the status he was hitherto holding as a daily wager' now, has been transformed to that of a regular Mechanical Helper, therefore his job now acquiring the mantle of and of his being entitled to a regular pay scale together with all incidental benefits as well as his being now subject to statutory rules and order regulating his terms and conditions of service, qua matters with regard to his recruitment to a "civil post" as, of a regular Mechanical Helper or qua the factum of his seniority over the other persons of that category are not only matters with respect to his recruitment to a "civil post" by the respondent, while, purportedly even depriving him of his earlier length of his service as a daily wager under the respondent, though, necessarily constituting qualifying service for his fitness to appointment to regular post, but, also while the claimant is seeking a relief of his being senior to other respondent, the question of his purported seniority over the respondents falls within the ambit of "service matters" defined in section 3 (q) of the Statutory Enactment creating the H.P. State Administrative Tribunal, hence, determinable by the said Judicial Authority, therefore, obviously qua both the facets i.e. of Recruitment and Promotion, of, the controversy as sought to be redressed before this Tribunal, do not, fall within the competence of this Tribunal, being, as discussed above divested of jurisdiction in respect of the above facets of controversy. Consequently it is held that this Tribunal has no jurisdiction to decide the same. Issues answered accordingly.

Reliance is placed by the AR for the petitioner upon a judgment reported in 1983 Lab.IC 1693 in sustaining his contention that the Tribunal ought to continue to exercise jurisdiction in the matter, is, in my very humble view a judgment qua, only the fact when in the face of the existence of an alternative remedy, an Industrial Tribunal refuses to exercise jurisdiction, hence, it implies and presupposes that in such circumstances where an alternative remedy exists, whose, non availment may constrain an Industrial Tribunal to refuse to exercise jurisdiction which refusal would be not justifiable, that, at least then that there is jurisdiction vesting also in the Industrial Tribunal. However, when there is an ouster of jurisdiction by a statutory enactment, as, in this case, when, there is no jurisdiction vesting in this Tribunal, which ought to be exercised concurrently with another Judicial Forum so as to say that their is an alternative dispute redressal avenue, so as then, to enable me to apply the judgment as relied upon. Even otherwise in the judgment relied upon by the AR for the petitioner there is no discussion as to whether in the face of an ouster of jurisdiction of all Courts excluding the Hon'ble Apex Court, or the Hon'ble High Courts while exercising jurisdiction under Article 226 of the Constitution of India by the statutory provision of the Administrative Tribunal Act, this, Tribunal would continue to be vested with the jurisdiction qua matters for whose adjudication a statutory body has been created, hence, in that light, also, the judgment as relied upon in inapplicable, to the subject at hand, where, the Tribunal is faced with a situation necessitating an answer as to whether jurisdiction ought to be exercised by this Tribunal on a controversy qua which it has been statutorily debarred. In other words the essential condition necessary for the application of the judgment relied upon by the AR for the petitioner being the existence of, an, alternative remedy, necessarily envisages the existence of jurisdiction, also, with this Tribunal, however, where, when it has been come to be divested by a Statutory Enactment, it, would not be a Judicial Forum enjoying concurrent jurisdiction qua controversies for whose

determination an exclusive Judicial Authority has been created, conversely, the State Administrative Tribunal, created under the Administrative Tribunal Act, would, not be an alternative Judicial Forum, but, the Solitary Forum, consequently, with divestment of jurisdiction of this Tribunal any exercise, by, it over controversies as the one, at, hand, for, reasons aforesaid while falling within the ambit of the jurisdiction of the State Administrative Tribunal, would, be, untenable.

Relief

Claim petition dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
5.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

Before Shri Sureshwar Thakur, Presiding Judge, H.P. Industrial Tribunal–cum **Labour Court, Dharamshala, Distt . Kangra H.P.**

Reference: No. 26/06

Presented on: 3.1.2006

Decided on 28.6.2007

Sh. Harjit Singh S/o Sh. Karam Singh C/o Shri R.K. Singh Parmar, General Secretary, PB. INTUC,211-L, Brari, P.O. Partap Nagar, Nangal Dam, Distt. Ropar (Pb).

..*Petitioner.*

Versus

Executive Engineer, Irrigation & Public Health Division No.1, Una, Distt. Una, H.P.

..*Respondent*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner — Sh. R.K. Singh Parmar, AR

For the respondent — Sh. H.S. Dhiman, Ld. Dy. D.A.

AWARD

The hereinafter extracted reference has been received for adjudication for the rendition of an award by this Tribunal:

"Whether the termination of services of Shri Harjit Singh S/o Shri Karam Singh workman by the Executive Engineer, I&PH Division, Una, District Una, H.P. w.e.f. 22.12.1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted ad-verbatim.

"1. I have the honour to submit that I was engaged with the respondent in the Mehatpur Sub-Division w.e.f. 1.1.1996 to 22.12.1996 and had put in 251 days of continuous service as defined under Section 25-B of the I.D. Act, 1947, when without any notice, compensation, charge-sheet or Enquiry, I was terminated from service.

2. However, I was re-engaged in 1977 for 64 days only in the year 1998 for 214 days and in 1999 for 72 days and in January, 2000 for 29 days.

3. That I approached the H.P. State Administrative Tribunal, Shimla vide Plaint No. O.A. No.3216/2000 for regularization of my services and the said Honourable Tribunal had ordered to approach the appropriate forum and hence Demand Notice and this reference.

4. That instead to regularize my services, my service were terminated in hire and fire.

5. That as admitted by the respondent before the honourable Tribunal, I had put in more than 240 days of continuous service and therefore I was entitled to protection under Section 25-F(a), 25-F(b) of the I.D. Act, 1947 and also 25-G of the I.D. Act, 1947.

6. That on 22.12.1996, no seniority was maintained before effecting my termination and the management had succeeded in retaining juniors to me those are S/ Sh. Hari Parkash S/o Kishori Lal, Ramesh Chand s/o Jiwan Dass, Jatinder Dutta S/o Sukhdev Dutta, Kabul Singh S/o Mela Singh, Tilak Raj s/o Mela Ram, Yash Pal S/o Kishan Singh, who were employed in the same sub-Division under the same Division (i.e.) Respondent. That all the above are juniors to me and were retained in service after 12/96. Rather new hands S/Sh. Kabul Singh etc. was employed in 2/97 and worked upto 10/97 and Jatinder Dutta from 1/97 to 19/97.

7. That all the above were retrenched in 10/97 on raising the dispute. They all were re-instated in service vide the Award dated 27.10.2000 in Reference No.194/98 titled as Hari Parkash and others and they all were taken back in service by the Respondent and are continuing in service.

8. That from the above, it would show that my termination from service is an unfair Labour practice.

9. That from the above, it would show that the management had adopted pick and choose methods in engagement and dis-engagement of the workman like me.

10. That the action of the management is arbitrary, unjust and un-constitutional and is also in utter disregard to the spirit of the Industrial Disputes Act, 1947.

11. That from the record it would show that I was at the mercy of the management al-through.

12. That my career had been ruined at the hands of the management/respondent, as they had indulged in nefarious designs by not placing me in seniority.

13. That instead to regularize my services, I had been forcibly put on road for no fault of mine.

14. That I had tried my best to secure employment but is facing un-employment till date.

15. That my termination from service w.e.f. 22.12.1996, an is illegal, void and bad-in-law, I am therefore entitled to re-instatement with full back wages except for 379 days during the period 23.12.1996 to 31.1.2000, for which I was allowed to work.

In view of all the above, my termination is illegal, void and bad-in-law and am entitled to reinstatement with full back wages, the same be ordered in the interest of justice".

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

ON MERITS

1. That the contents of this Para are admitted to the extent that the applicant was initially engaged on daily waged basis during 1/1996 but he was not regular in attending to his duties and he worked intermittently according to his sweet will as is evident from the working days endorsed as per Annexure R-I.

2. That the contents of this Para are admitted to the extent that the applicant was engaged on original work and worked intermittently according to his own Will under IPH sub division Mehatpur. During the year 1997 for 64 days , during the year 1998 for 214 days, during the year 1999 for 72 days and during the year 2000 for 29 days and left the job at his own. The working days qua the applicant are appended herewith as per Annexure R-1.

3. The contents of this Para are admitted to the extent that the applicant has approached before the H.P. Administrative Tribunal by filing Original Application No. 3216/2000. Accordingly the aforesaid case of applicant was disposed off by the Hon'ble Court vide order dated 18.3.2002 with the direction to approach the appropriate forum.

4. That the contents of para No.4 are wrong hence denied. The services of the applicant were not terminated by the respondent but he himself had abandoned the job and did not report for duty even when he was asked to so vide Assistant Engineer, IPH Sub-Division Mehatpur Letter No.1154-55 dated 8.11.2001. The copy of letter is endorsed as per Annexure R-II.

5. That the contents of para No.5 of the petition are wrong hence denied. The applicant had not completed 240 days in the proceeding twelve months from the date of his alleged retrenchment as such Section 25-F was not attracted. The petitioner had abandoned the job himself so there is not violation of Section 25-G of the Act.

6. That the contents of para No.6 of the petition are wrong hence denied. The services of the applicant were not terminated by the department as stated above. However, it is submitted that the person named in his para were initially engaged later to the petitioner, but they were regular in their attendance in the year 1997 and they had completed more than 240 days in the year 1997. It is pertinent to mention here that they were dis-engaged w.e.f. 15.10.19997 but their dis-engagement

was found to be in violation of Section 25-F of the Industrial Disputes Act as such they were ordered to be re-engaged as per the decision of Labour Court dated 26.7.2000. Copy of decision/Award is attached herewith as per Annexure R-III. It may be stated that the services of the applicant were not terminated on 15.10.1997 when the other person name in the para were dis-engaged . The applicant has worked for 64 days in 1997, for 214 days in 1998, for 72 days in 1999 and for 29 days in the year 2000. The applicant had not completed 240 days from 1997 onward as such his name did not figure in the seniority list. The seniority list is mentioned only in respect of the persons who complete 240 days in each calendar year continuously, resultantly the applicant lost his seniority in the year 1997 and he continued to work intermittently upto year 2000, so the engagement of Sh. Kabul Singh and Sh. Jatinder Dutta does not violate any provision of law.

7. That the contents of para No.7 of the petition are admitted to the extent that the said person were retrenched in 10/19997 and reinstated vide Award dated 26.10.2000 in Reference No.194/1998 titled as "Hari Parkash and others Versus The Executive Engineer, IPH Division No.I, Una. "But it may be clarified here that all had completed 240 days in the year 19997 whereas the petitioner worked for 64 days in the said year as such they all became senior to him.

8. That the contents of para No.8 are wrong hence denied. The respondent has not terminated the service of the petitioner and the Department had not indulged in unfair labour practice.

9. That the contents of para No.9 are wrong and hence denied. The workmen are engaged and disengaged as per the rule and in accordance with law.

10. That the contents of para No.10 are wrong hence denied. The petitioner has himself abandoned the job and the action of the department is not unfair and un-justice in any manner.

11, 12 & 13. That the contents of para No.11,12, and 13 are incorrect in view of the Facts as stated above.

14. That the contents of para No.14 of the petitioner are incorrect, infact he is in Gainfully employed.

15. That the contents of para No.15 of the petition are in total variation of the reference made by the State Government and are wrong and incorrect. The petitioner had himself abandoned the job and he is not entitled to be reinstated.

It is therefore, respectfully prayed that the petition may kindly be dismissed being false and fabricated".

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:-

(1) That the written statement given in this para is wrong, baseless, the breaks were at the sweet will of the management and not on the part of the workman and the claim statement is re-iterated. The subordinates are always at the mercy of their masters.

(2) That the petitioner was allowed to work only for the days indicated in R1 but the petitioner had already completed more than 240 days of service within 12 calendar months. The workman had served the Demand Notice against his illegal termination on 20.12.1996.

(3) That the para stands admitted and therefore needs no reply.

(4) That the averments made are incorrect and is a concealment of material fact and it was the management's mischiefs and he was not allowed service and alleged R-II was never served upon the workman and the management is making a lame excuse.

(5&6) The averments made are wrong, as self admission of the respondent is sufficient through document R1 wherein it is admitted that the petitioner has completed 251 days of service, the management has failed to serve one month's notice and to pay the retrenchment compensation and nonmaintaining of seniority of category and juniors were retained in service. All the persons re-instated by the Honourable Industrial Tribunal, Shimla are juniors to the petitioner Harjit Singh.

(7) That the applicant was senior as he had already completed 240 days in year 1996 and thus all of them were juniors and even then he was not allowed to work and juniors were allowed to work. Fresh-hands were recruited ignoring the right of re-employment which is a mandatory under Section 25-H of the I.D. Act, 1947.

(8) That the averments made are irrelevant, the claim statement is correct and is re-iterated.

(9) That the averments are wrong, baseless, claim statement in this para is correct.

(10) That the assertion that the workman has abandoned the job is incorrect, as abandonment is a retrenchment as held by the court of law, when there is no charge-sheet, Enquiry or show cause notice.

(11,12,13) That the written statement is wrong, baseless and claim statement in these paras is correct.

(14) The averments made are wrong, baseless and are totally incorrect, claim statement is re-instated.

(15) The written statement is correct, there is no abandonment, the workman Sh. Harjit Singh was after the management for resumption of his duties, but it is the management, who had preferred to engage and to continue the juniors and freshers than to provide the legitimate right to the applicant.

That in view of all the above, it is respectfully prayed that the Award re-instating the petitioner in service with full back-wages may kindly be passed".

On the pleadings of the parties the following issues were framed by this Tribunal.

7. Whether the termination of the services of the applicant is lawful or not?

..OPC

8. Whether the applicant abandoned his job under the respondent?

..OPR

9. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	No findings in view of findings on issue No.2.
Issue No.2	Yes, in view of the fact that inference of abandonment flows from the prior inference of the claim being stale.
Issue No.3	Claim Petition dismissed.

REASONS FOR FINDINGS

Issue No. 2

It has been contended by the ld. counsel for the respondent that in the light of the interpretation afforded by the Hon'ble High court of H.P., to, the provisions of sub – section 1 of section 10 of the Industrial Disputes Act, whose provisions are extracted hereinafter and when the reference in this case is made with respect to the termination of the services of the claimant which took place in the year 1996, the reference comprises a plainly stale claim and even when there is an implied or tacit issue as struck with respect to the non- maintainability of the reference on ground of delay and latches as stemming from abandonment of job, then, even since the above fact/issues touches upon the jurisdiction of this Tribunal, it, ought to be determined prior to the rendition of findings on other issues as a finding in the affirmative on the above may oust the Reference, on that score alone. I am in clear agreement with the above contention, hence, would proceed to determine the said fact prior to returning of findings on other issues.

10. Reference of disputes of Boards, Courts or Tribunals.- (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time,] by order in writing-

(i) refer the dispute to a Board for promoting a settlement thereof; or

(j) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(k) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(l) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

[Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference

under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

[Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.]

In support of the contention about the claim petition being hit by delay and latches, the ld. counsel for the petitioner has relied upon the judgment of the Hon'ble High Court of H.P. while deciding CWP in which verdict of the Hon'ble High Court of H.P., the Hon'ble Court came to draw an interpretation of the terms "any Industrial dispute exists or apprehended" as existing in sub section 1 of section 10 of the Industrial Disputes Act while coming to interpret the aforesaid terms it relied upon a string of judicial pronouncement of the Hon'ble Apex Court, thereupon, the Hon'ble High Court of H.P. came to the conclusion that the aforesaid terms have reference and a bearing to a dispute which is not stale which would make it so by an unexplained and in ordinate lapse of time from the date its having arisen resulting in the gathering of the conclusion that it is faded.

In taking the view as it did, the Hon'ble High Court of H.P. relied upon a string of judicial pronouncements of the Hon'ble Apex Court, commencing from its verdict rendered in M/s. Shalimar Works Ltd. Vs. Their Workmen reported in 1959 SC 1217 and ending with its verdict in Madhvan Kutty's case reported in 2000 2SCC 455.

The ld. counsel appearing for the claimant has also drawn my attention towards the verdict rendered by the Apex Court reported in 1970(1) Supreme Court Cases 225, the relevant portion of which is extracted, hereinafter, to cement his contention that delay and latches are not a bar to the exercise of jurisdiction by this Tribunal and that no limitation is prescribed by the statue for the raising of an industrial dispute. However, on a reading of the hereinafter extracted relevant portion of the judgment of the Hon'ble Apex Court as relied upon by the ld. counsel for the claimant, I am of the firm view that the factual matrix of the string of judicial pronouncement relied upon the Hon'ble High Court of H.P. while deciding CWP No.398/2001 is more apposite to the core of the controversy which is the one relating to the fact whether in the light of the terms existing in sub section 1 of section 10 of the Industrial Disputes Act, Couched in the phraseology "any dispute exists or apprehended", as to whether the above terms prescribe any period of limitation for the raising, of, any industrial dispute, by, the claimant so far as to say that the dispute is in existence or is apprehended. It was only on a consideration of a string of judicial pronouncement handed down since the year 1959, that, the Hon'ble High Court of H.P. while relying upon the judgment of Hon'ble Apex Court in Nadungadi Bank Ltd. Vs. K.P. Madhavankutty and others reported in (2000) 2 SCC 455,
concluded, that stale disputes do not enjoy statutory approbation, resultantly, a conclusion was formed that references comprising such stale disputes, which, they are, by, unexplained delay in their being raised hence, are to be construed to have faded and that accordingly such references are also bad. However, in the judgment of the Hon'ble Apex Court relied upon by the ld. counsel for the claimant reported in 1970(1) SCC 225, the Hon'ble Apex Court neither took to test the legality of the pronouncement in earlier judgment reported in AIR 1959 SC 1217, as the essence of the controversy in the verdict of the Hon'ble Apex Court relied upon by the ld. counsel for the claimant did not necessitate any interpretation by it of whether the terms "any dispute exists or apprehended" existing in sub section 1 of section 10 of the Industrial Dispute Act, prescribed any period of limitation for the raising of a dispute, hence, obviously the said terms remained uninterpreted, then. Rather, the controversy before the Hon'ble Apex Court in that case was whether the refusal by the competent authority to make a reference to the Tribunal can stand in the way of a subsequent

reference by the Govt., to, which, controversy the Hon'ble Apex Court gave a verdict that the provisions of section 4(k) of the U.P. Industrial Dispute Act, can not be so interpreted so as to bar a second reference by the competent authority, to the Tribunal, if circumstance warrant its reference afresh after initial refusal by the Govt.. As a natural corollary, in my view the verdict relied upon by the ld. counsel for the claimant being a pronouncement upon provisions of law, not, similar to the one existing in the verdict of the Hon'ble Apex Court relied upon by the ld. counsel for the respondent which verdicts have directly dealt with the germane controversy apposite to and of aid to this Tribunal in determining whether any period of limitation is prescribed by sub section 1 of section 10 of the Industrial Disputes Act, and an interpretation of whose terms directly engaged the attention of the Hon'ble Apex Court while delivering the later decision as relied upon by the ld. counsel for the respondent and which provisions did not directly engage the attention of the Hon'ble Apex Court, while deciding the earlier case titled as M/s. Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and others reported in 1970(1) Supreme Court Cases 225, which dis-similarity of the controversy and the scope of discussion in the two verdicts, does not persuade me to hold that the verdict relied upon by ld. counsel for the claimant clinches or lays down the ratio decidende in respect of the interpretation to be afforded to the terms "any dispute exists or apprehended" in sub section 1 of the section 10 of the Industrial Disputes Act, which terms having been interpreted by the Hon'ble Apex Court in a later verdict rendered by it Nandungadi Bank Ltd. Vs. K.P. Madhavankutty and others reported in (2000) 2 SCC 455, as such, comprises the ratio decidendi in respect of the view to be taken by the Courts of law in respect of the said terms existing in sub section 1 of section 10 of the Industrial Disputes Act and which have been interpreted to bar entertainment of stale disputes.

> "9…..In the State of Madras v. C.P. Sarathy this Court held on construction of Section 10 (1) of the Central Act that the function of the appropriate Government thereunder is an administrative function. It was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible. In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute. (Sindhu Resettlement Corporation, Ltd v. Industrial Tribunal). Such a view has been taken by the High Courts of Andhra Pradesh, Madras, Allahabad, Rajasthan, Punjab and Madhya Pradesh. [See gurumurthi (G) v. Ramulu (K), Vasudeva Rao v. State of Mysore, Rawalpindi Victory Transport Co. (P) Ltd. V. State of Punjab, Champion Cycle Industries v. State of U.P., Goodyear (India) Ltd., Jaipur v. Industrial Tribunal and Rewa Coalfields Ltd. v. Industrial Tribunal, Jabalpur]. The reason given in these decisions is that the function of the Government either under Section 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as res judicata applicable to judicial Acts do not apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has

declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief, does not affect the jurisdiction of the Government to make the reference.

14. In the present case though nearly four years had gone by since the earlier decision not to make the reference, if the Government was satisfied that its earlier decision had been arrived at on a misapprehension of facts, and therefore, required its reconsideration, neither its decision to do so nor its determination to make the reference can be challenged on the ground of want of power. The fact that the dispute between the concerned workman and the management had become an industrial dispute by its having been espoused by the union since 1957 cannot be disputed. The fact that the workman was then not a member of the union does not preclude or negative the existence of the community of interest nor can it disable the other workmen through their union from making that dispute their own. The fact that the Government refused then to exercise its power cannot mean that the dispute had ended or was in any manner resolved. In the absence of any material it is not possible to say that with the refusal of the Government then and the dismissal of the writ petition by the High Court in March 1959 the dispute, which was already an industrial dispute, had ceased to subsist or that on Respondent 3 joining the union in July 1962 the union revived a dispute which was already dead and not in existence. His becoming a member in July 1962 was as immaterial to the power of the Government under Section 4(k) as the fact of his not being a member at the time when his cause was espoused in 1957 by the union and the dispute becoming thereupon an industrial dispute. The question of his membership, therefore, has to be kept apart from the right of the other workmen to espouse his cause and the power of the Government under Section 4(k). It may be that his becoming a member in 1962 may have been the cause of the union's subsequent efforts to persuade the Government to reconsider its decision and make a reference on proper facts being placed before it and its earlier misapprehensions removed. But that again has nothing to do with the jurisdiction of the Government under Section 4(k) of the Act. ….."

Also reliance is placed by the ld. counsel for the claimant upon a verdict of the Hon'ble Apex Court reported in (1999) 6 Supreme Court Cases 82 titled Ajaib Singh Vs. Sirhind Co-operative Marketingcum- Processing Service Society Ltd. And another the relevant, portion, of, which is relied upon by him while canvassing before this Tribunal that no period of limitation is prescribed for raising of an Industrial dispute before this Tribunal. However, not only when the said judgment of the Hon'ble Apex Court is an earlier pronouncement than the pronouncement by the Hon'ble Apex Court in Madhuvankutty case reported in (2002) 2 SCC 455, where, the question of whether any period of limitation having come to be prescribed by the Industrial Disputes Act, fell for consideration and the Hon'ble Apex Court while interpreting the provisions of sub section 1 of section 10 of the Industrial Disputes Act came to the conclusion that the relevant terms "any dispute exists or apprehended" contained in it, envisaged, a, dispute raised promptly and not a stale dispute, the, later view, of, the Hon'ble Apex Court while directly dealing with the terms relevant to determine whether the provisions of the Industrial Dispute Act envisage entertainment of stale disputes or not and having concluded that the relevant terms do not envisage entertainment of stale disputes, the later view, straight on the controversy ought to be vindicated, as in distinction to the interpretation afforded to the relevant terms of the statute by the Hon'ble Apex Court in Madhvankutty's case, with, the earlier verdict of the Hon'ble Apex Court in case titled as Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd. And another reported in (1999) 6 SCC 82, where the Hon'ble Apex Court thought it appropriate to deal with the

provisions of section 10 of the Industrial Disputes Act, yet, the terms "any dispute exists or apprehended" existing in sub section 1 of the section 10 of the Industrial Disputes Act, did come to be afforded any interpretation, which terms came to be subsequently interpreted in Madhavankutty's case. The view taken by it of no period of limitation having been prescribed under the Industrial Disputes Act, was merely on the strength a conclusion that the provisions of the Limitation Act are applicable to only proceedings in courts and do not apply to applications or proceedings before those bodies other than courts, such, as Quassi Tribunal or Judicial Authorities, as an, Industrial Tribunal, is, hence, both with no specific period of limitation prescribed in the statute and with the various provisions of Limitation Act prescribing different periods of limitation in respect of matters before courts alone not applicable, to, an Industrial Tribunal, the, bar of limitation was held to be not available to oust a reference on the ground of delay. However, Madhvankutty's case, though not over ruling the verdict in Ajaib Singh's case came to the conclusion as it did form about stale claim being not comprised within the relevant terms of section 1 of the section 10 of the Industrial Disputes Act, whereas the Hon'ble Apex Court in Ajaib Singh's case depended upon the ruling in Ram Chander Morya Vs. State of Haryana, (1999) 1 SCT 141 (P&H) while skirting the core issue, which was dealt with in Madhvankutty's case and on a circumspect appraisal of an in built provision of the Industrial Disputes interpreted it and on an interpretation, afforded by it, to the terms, 'any dispute exists or apprehended' formed the conclusion that the said terms do not comprise as "stale claim" without the necessity of relying upon the judgment as relied upon by the Hon'ble Apex Court in Ajaib Singh's case. Since a clear point of view of has been expressed in Madhvankutty's case about a period of limitation having been prescribed in the Act, though, subtly, therefore, the latter view as expressed by the Hon'ble Apex Court, on, the phraseology/terms existing in the statute itself, in my very humble view ought to carry weight, hence, I hold that the later ruling of Hon'ble Apex Court prescribes a period of limitation for raising of Industrial Dispute Act in, and since stale disputes are barred, therefore, the implicit self contained expressions, in the statute, also, ought to be revered as they were in Madhvankutty's case, without, looking elsewhere.

> "7……This Court in Bombay Gas Co. Ltd. V. Gopal Bhiva held that the provisions of Article 181 (now Article 137) of the Limitation Act apply only to applications which were made under the Code of Civil Procedure and its extension to applications under Section 33-C(2) of the Act was not justified. This position was further reiterated and explained by this Court in Town Municipal Council, Athani v. Presiding Officer, Labour Courts. (SCC pp.882-83, paras 11-12)
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> 11. It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. The language of Article 137 is only slightly different from that of the earlier Article 181 inasmuch as, when prescribing the three years' period of limitation, the first column giving the description of the application reads as 'any other
> application for which no period of limitation is provided elsewhere in this division'. In fact, the addition of the word 'other between the words 'any and 'application' would indicate that the legislature wanted to make it clear that the principle of interpretation of Article 181 on the basis of ejusdem generic should be applied when interpreting the new Article 137. This word 'other' implies a reference to earlier articles, and, consequently, in interpreting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division to the Schedule refer to applications under the Code of Civil Procedure, with the exception of applications under the Arbitration Act and also in two cases applications under the Code of Criminal Procedure. The effect of introduction in the third division of the Schedule of reference to applications under the Arbitration Act in the old Limitation Act has already been considered by this Court in the case of Sha Mulchand & Co. Ltd. We think that, on the same principle, it must be held that even the further alteration made in the articles contained in the third division of the Schedule to

the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary Article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure.

12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the Schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. At best, the further amendment now made enlarges the scope of the third division of the Schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by thearticles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purpose of limitation by Article 137.

8. In Sakuru v. Tanaji it was held that the provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The view taken by this Court in Municipal Council, Athani and Nityananda M. Joshi v. LIC of India was reiterated with approval.

11. In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that “it is true that a fight between the workman and the management is not a just fight between equals”, the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he

could not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedngs under Articles 226/227 of the Constitution.

12. We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant workman some part of the back wages. In the circumstances, the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with the modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8-12-1981 when he raised the demand for justice till the date of award of the Labour Court, i.e., 16-4-1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs.5000 to be paid by the respondent management. Even, though, the ld. Authorised representative for the petitioner, has, further, echoed his resistance to the applicability of the pronouncements as extracted herein above, and, has sought to fortify his resistance by banking upon a judgment of the Hon'ble Apex Court reported in 2001 (6) SCC 2221 titled "Sapan Kumar Pandit Vs. H.P.S.E.B and other", to contend` that no limitation is prescribed, under the Act, however, with the Hon'ble Justice Sh. C.K. Thakker, while deciding C.W.P. 398/2001, as, is apparent from the reading of the judgment rendered by him, was aware, of, the afore relied pronouncement of the Hon'ble Apex Court, and on an incisive analysis of the verdict in Sapan Kumar Pandit's case, postulating a digression by the Hon'ble Apex Court, from the earlier view rendered in Nedungadi Bank Ltd., in, as much, as, the distinguishing mark of the deviant view taken by the Hon'ble Apex Court in Sapan Kumar Pandit's case, was the legitimate expectation, entertained by the claimant
in that case on an assurance to him by the Management/employer, that, as and when, the benefits were accorded in to similarly situated co-workmen, who, had promptly raised the dispute, through, the workers Union, he, too, would being similarly situated, even, if, he had not preferred a claim, would be afforded parity of treatment with them, hence, his omission to take steps to redress his grievance at the earliest was held not to be fatal. However, the Hon'ble Apex Court did not apart from the distinguishing the facts in Sapan Kumar Pandit's case, from Nedungadi Bank Ltd. Case, decided, by it earlier, while, denouncing preferment of stale claim, did not reconsider the ratio decidendi laid by it, in Nedungadi's case, hence, the ratio decidendi in the Nedungadi's case remains interact, and is undisturbed save for the salient distinguishing mark in S.K. Pandit's case, which, alone constrained the Hon'ble Apex Court to take a dissimilar view, only on existence of an assurance , received, by the claimant in that case from his employers for re-engagement or by the existence of the some pressing cause, which precluded him to raise an industrial dispute, which facts, as they existed in S.K. Pandit's case, so, as, to comply with the deviant rule in the said case, from the preponderant view in Nedungadi's case, do not exist on the record, of this case, therefore, the ratio decedendi in Nedungadi Bank Ltd., case is applicable to the facts of this case.

Bearing in mind the above discussions hinged upon the verdict of the Hon'ble High Court of H.P. holding that the belated preferment of claim imbues it with staleness, so, as to render the reference comprising the dispute to be, also, stale, thereby rendering the reference as not maintainable and while keeping in mind the delay and latches as have taken place, since, the retrenchment of the workmen which in took place in the year 1996, the reference as has been made of the dispute by the competent authority in the year 2005 is manifestly and palpably belated, especially, when of no explanation on proof of delay thereof exists, hence stale, therefore, on account of staleness of the claim, the claim, as, preferred before this Tribunal, in my view is not maintainable being barred by delay and latches. Since the staleness of claim has been held to be not keeping the dispute alive, therefore, the conclusion is that the workman has acquiesced in it or a dispute as it then was and which ought to have been expeditiously canvassed by the workman on

account of delay can be said to have been effaced or faded, so, also, the concomitant effect is that inference of abandonment can also be made. Issue decided accordingly.

Relief:

Claim Petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette.

The file after completion be consigned to the record room.

Announced
28.6.2007

Sd/-
(SURESHWAR THAKUR),
Presiding Judge,
LabourCourt-cum-Industrial
Tribunal, Dharamshala.

(हिमाचल प्रदेश सरकार के असाधारण राजपत्र में प्रकाशित किया जाएगा)

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हिमाचल प्रदेश ग्यारहवीं विधान सभा

संख्या: वि0स0-विधायन-प्रा0/1-21/2008 दिनांक शिमला-4 13 फरवरी, 2008

अधिसूचना

राज्यपाल महोदय का निम्नलिखित आदेश दिनांक 13 फरवरी, 2008 सर्वसाधारण की सूचनार्थ प्रकाशित किया जाता है :-

" मैं, विष्णु सदाशिव कोकजे, राज्यपाल, हिमाचल प्रदेश, भारतीय संविधान के अनुच्छेद 174 (1) द्वारा प्रदत्त शक्तियों के अनुसरण में हिमाचल प्रदेश ग्यारहवीं विधान सभा के द्वितीय सत्र का आह्वान मंगलवार, 4 मार्च, 2008 को पूर्वाह्न 11:00 बजे से परिषद् सदन, शिमला-4 में समवेत होने के लिए करता हूँ ।

विष्णु सदाशिव कोकजे,
राज्यपाल,
हिमाचल प्रदेश ।"

आदेश द्वारा :-

गोवर्धन सिंह,

सचिव,
हि0 प्र0 विधान सभा ।

HIMACHAL PRADESH ELEVENTH VIDHAN SABHA

NOTIFICATION

Shimla–171004, the 13th February, 2008

No. VS-Legn.-Pre/1–21/2008.— The following order dated, the 13th February, 2008 by the Governor of the State of Himachal Pradesh, Shimla-2, is hereby published for general information:-

" मैं, विष्णु सदाशिव कोकजे, राज्यपाल, हिमाचल प्रदेश, भारतीय संविधान के अनुच्छेद 174 (1) द्वारा प्रदत्त शक्तियों के अनुसरण में हिमाचल प्रदेश ग्यारहवीं विधान सभा के द्वितीय सत्र का आह्वान मंगलवार, 4 मार्च, 2008 को पूर्वाह्न 11:00 बजे से परिषद् सदन, शिमला -4 में समवेत होने के लिए करता हूँ ।

विष्णु सदाशिव कोकजे,
राज्यपाल,
हिमाचल प्रदेश ।"

By order,
GOVERDHAN SINGH,
Secretary.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित